

THE CHURCH, THE CONSTITUTION, AND THE CULTURE:  
THE AMERICAN POLITICAL DEVELOPMENT OF THE SEPARATION  
BETWEEN CHURCH AND STATE

by  
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## *Abstract*

Upon his arrival at Cape Cod, William Bradford—the future Puritan governor of Plymouth Colony—wearied, malnourished, and close to despair, wrote on behalf of his helpless group of settlers:

What could now sustain them but the Spirit of God and His grace? May not and ought not the children of these fathers rightly say: ‘Our fathers were Englishmen which came over this great ocean, and were ready to perish in this wilderness; but they cried unto the Lord, because He is good: and His mercies endure forever. Yea, let them which have been redeemed of the Lord, shew how He hath delivered them from the hand of the oppressor. When they wandered in the desert wilderness out of the way, and found no city to dwell in, both hungry and thirsty, their soul was overwhelmed in them. Let them confess before the Lord His lovingkindness and His wonderful works before the sons of men.’<sup>1</sup>

Since the initial landing of the Puritan colonists, the religious nature of the first Western arrivals to America has exerted influence upon the nation throughout its formative history. Codified within the First Amendment, the separation between church and state sought to avoid trouble, not encourage it. Troubled us it has, however, and the tumult has not yet passed. Conflicted between elements of its own character, the nation continues to wrestle with the interpretation of the metaphorical “wall” between the church and state. This analysis uses the American Political Development (APD) theory lens to study the

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<sup>1</sup> William Bradford, *Of Plymouth Plantation*, (New York: Random House, 1981), p. 71.

developing nature of the separation and the impact of three distinct influences upon the wall: the church, the Constitution, and the culture. Analysis of these three “Cs” found that the Founders understood the crucial difference between civil structures of organized religion and the influence of values on government—specifically, those values used to guide elected and appointed officials’ decisions, and consequently intended the wall to insure religious liberty, not to prevent the influence of religious values upon the government. The U.S. Supreme Court, via interpretation of the U.S. Constitution, has consistently upheld the Founders’ intention for the wall; however, a new interpretation for the nature of the wall has emerged from the changing value system within American culture. Beginning in 1960 in response to political and economic modernization, shifts in American values developed through mediums of American music, education, and film. While religion does fall underneath the umbrella of “culture,” and also influenced American culture and society in the past, even to some degree today, this study analyzes how the *secular* culture influenced the contemporary era, notably the secularization of music, education, and film. The secularization of American culture contributed to a new interpretation of the wall; however, the Founders’ interpretation established precedent. The separation of church and state in America confirms the APD claim that nations continue to bear some marks of their origin throughout the entire course of their history; America’s religious founding continues to reverberate throughout the separation of church and state policy and informs America’s contemporary identity.

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## *Introduction*

*Go back; look at the baby in his mother's arms; see how the outside world is first reflected in the still hazy mirror of his mind; consider the first examples that strike his attention; listen to the first words which awaken his dormant powers of thought; and finally take notice of the first struggles he has to endure. Only then will you understand the origin of the prejudices, habits, and passions which are to dominate his life. The whole man is there, if one may put it so, in the cradle. Something analogous happens with nations. Peoples always bear some marks of their origin. Circumstances of birth and growth affect all the rest of their careers. If we could go right back to the elements of societies and examine the very first records of their histories, I have no doubt that we should there find the first cause of their prejudices, habits, dominating passions, and all that comes to be called the national character.<sup>2</sup> -Alexis de Tocqueville*

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<sup>2</sup> Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, ed. J.P. Mayer (New York: Harper & Row, 1969), p. 30-31.



When Alexis de Tocqueville recorded his observations on the origins of nationhood, he poignantly captured a truth essential to understanding the character of the infantile American nation, newly stepping into its role in the world, and consequently, its precedent for patterns of decision-making and behavior in general. De Tocqueville postulated that if one desired to analyze a country, one must look at its founding moment: “The circumstances which accompany the birth of nations and contribute to their development affect the whole term of their being,”<sup>3</sup> thus he espoused the idea that a nation will habitually revert to its “genetic code” due to the nature of its impact during the country’s founding. The study of American Political Development (APD) is the historical research of American politics over time. “Because a polity in all its different parts is constructed historically, over time, the nature and prospects of any single part will be best understood within the long course of political formation,”<sup>4</sup> wrote Karen Orren and Stephen Skowronek—two pioneer scholars in the field of American political development. According to APD scholars, the founding of any particular culture is embedded and consequential; America’s Puritan origins represent a formative factor at play during the nation’s founding and thereafter specifically influenced the future course of the nation.

The goal of this thesis is to use APD as a lens to analyze a brew of factors that, considered mixed together, affected the rest of American history, specifically the nation’s policy on the separation of church and state. Three particular factors indelibly shaped

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<sup>3</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 1.

<sup>4</sup> Ibid.

America's domestic policy, identified in this thesis as the three "Cs": the church, the Constitution, and the culture. These three factors were present and powerful at the founding, and they each continue to play an important role in America today. However, throughout American history the three Cs have traded places as the dominant force in shaping society, even though the period of primacy for each can be identified chronologically based upon case precedence. The church primarily influenced the founding era, and the U.S. Supreme Court (via the Constitution) primarily influenced the era beginning in the 1940s, but subsequently took a back seat to American culture and its dominance beginning in the 1960s. The nature of the C's relationship with religion in turn shaped all three eras, and the effect of the nation's founding rippled throughout the history of American politics due to its inherent religious nature. This thesis will use the APD theory to explain the history of the separation between church and state and to analyze the pattern of change by separating it into the three distinct eras influenced by its particular "C" theme. Additionally, it will show the factual and theoretical beliefs (of religion) that guided official or unofficial policy actors in the first chapter on the church; evaluates the consequences of the policies they pursued in Chapter 2 on the Constitution, specifically addressing the landmark cases of the church-state separation as a gauge for analyzing society's priority; and analyzes how the secularization of American culture has impacted society in Chapter 3.

While many authors have written on the separation of the American church and state, none have tackled the topic within the field of APD. Why did the three eras turn out the way they did instead of some other way? This thesis argues the catalyst for change in each era relies on the shift in American values. While the church, the U.S. Constitution,

and the culture continually interact, a specific set of values emerges within each “C” as the impetus of change between each period. What is it that each do over time and how do they work...why was each influential—gauged by societal standards and behavior, public policy, and the law (case precedence)—more so than the others in their particular era? This thesis posits that the shift in values is the vehicle for change or “development” for the three Cs as “human history’s guiding principle.”<sup>5</sup> This thesis attempts to gauge the significance of change throughout these three distinct eras to analyze political development which emphasizes change over time, and ultimately argues that the shift in values witnessed in each distinct epoch is worthy of the term “development” in American politics, thus the shift is positive. Indeed, “new government policies create new politics,”<sup>6</sup> but the value system is the precursor of those government policies. While other research focuses on the political history of the United States as the foundation for APD, this thesis amplifies Karen Orren and Stephen Skowronek’s (2004) claim that APD hinges upon the historical construction of politics and the “political arrangements of different origins in time operating together.”<sup>7</sup> Time is the vehicle that transports the development of APD, or in this particular case, the separation of the church and state institutions, as it traverses a cultural bridge established on American values.

Relying on document comparison and first-hand accounts from the founding era, landmark U.S. Supreme court cases in the constitutional era, and a combination of music, education and film in the post-1960s cultural era, this thesis analyzes what Stephen

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<sup>5</sup> Ibid, p. 37.

<sup>6</sup> E.E. Schattschneider, *Politics, Pressures and the Tariff* (New York: Prentice Hall, 1935), p. 288; Theodore Lowi, “American Business, Public Policy, Case Studies and Political Theory,” *World Politics* 16(4), 1964, p. 677-715.

<sup>7</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. X.

Skowronek called the “intercurrence”<sup>8</sup> of the church, Constitution, and culture as they interact within and outside their own realm and pace of change. This paper begins by defining the three “Cs” and then analyzes their interaction within the flow of history. The study of the political development of the church and state institution requires comparative evidence regarding both contexts and behavior, hence the use of history as a laboratory and the choice of three distinct eras as a focal point. In sum, although this study focuses on the transition between the aforementioned eras, its primary objective is not to evaluate history. Its goal rather is to bring analysis and evidence to bear upon the understanding of the dynamic relationship between the American separation of the *institution* of the church and the state (not the separation of religious *values*), ensconced within the Constitution and culture of America, and to further suggest that the understanding has evolved from what the American founders originally established. This is important since it forms a basis for an accurate apparatus upon which to build when evaluating each period of time. The separation of church and state is not simply a “topic of historical controversy [but rather a] topic of present-day controversy whereby history can be seen to bear directly on the contemporary political dilemma.”<sup>9</sup>

The importance of this topic should not be obscured like the field of American political development has mistakenly been. In light of claims that APD’s distinct contribution to the field of political science is fading in comparison to multiculturalism, globalism, and U.S. hegemony, (which ultimately obscure America’s past), this topic asserts a fresh perspective on the role of America’s inherently religious identity as it

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<sup>8</sup> Karen Orren and Stephen Skowronek, “Institutions and Intercurrence: Theory Building in the Fullness of Time,” *Nomos*, Vol. 38, POLITICAL ORDER (1996), p. 111-146, <http://www.jstor.org/stable/24219548>.

<sup>9</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 28.

pertains to the separation of church and state, the first contribution to the field of APD. The identity of America, that is, a commonly held view of America's fundamental virtues, must be agreed upon and passed on to each generation for the nation's survival; if its citizens are not educated on their origin and its impact over time, then the nation will crumble from lack of a cohesive identity. Therefore, this topic directly affects America's potential decisions to assert a hegemonic role (the nation must have a comprehensive understanding of its own nature before it can assert power beyond its own borders), navigate its role in globalism, and appropriately place itself within multiculturalism as a result of a thorough awareness of its own identity; it assuages the concern that "scholars today have less to say than scholars in earlier generations about the development of the American polity overall."<sup>10</sup> The American polity has relied upon its religious identity throughout history to meet new challenges and place itself among changing political persuasions. Additionally, this thesis develops a discernible pattern within the field of APD: the nation's consistent tendency to revert to its religious founding to inform its decision-making during times it finds itself in unfamiliar waters. Orren and Skowronek emphasize the importance of pattern identification within *any* field of study:

Without pattern identification...American political history would be just 'one...thing after another,' a relentless succession of events impervious to any larger meaning...discovering patterns helps to locate the key components of a situation and demarcating them helps to identify meaningful points of change—before as opposed to after Congress reorganized itself; at the start as opposed to the end of the war; before the civil rights movement as opposed to after the

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<sup>10</sup> Ibid, p. 4.

mobilization of African Americans into politics. Political history...is always an arrangement of time into patterns.<sup>11</sup>

There are two main reasons the field of American political development has been given much less attention than its political counterparts: first, the study of APD crosses theoretical and disciplinary boundaries; there is no unified body of APD literature that can be readily accessed by mainstream theories in political science. For example, APD is a subset of American politics, a sub-field of political science, and it also fits into the theoretical framework of the American polity overall; therefore, a common approach in the political science field is to treat APD essentially in terms of “skeptical” politics rather than a discipline that is distinctive. Second, and consequently, mainstream theories have tended to ignore the emergence of APD as a new actor (or perhaps it was there all along but never acknowledged). For example, one reason APD has not received much attention from theorists is because they question the distinctive contributions offered by APD; it is a theoretical approach that looks similar to the rest of history and political science.

Following the logic of this argument, APD is an object of study for negative reasons; that is, the absence of a dominant theoretical paradigm allows it a place at the table of inquiry. Therefore, and finally, this thesis sheds important light on a recently-identified shortcoming within APD, that is, “...the absence of more comprehensive thinking about the relationship between past and present, [which] is conspicuous and might well be counted the most serious shortcoming in APD’s recent revival.”<sup>12</sup>

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<sup>11</sup> Ibid, p. 7-8.

<sup>12</sup> Ibid, p. 4.

In Chapter 1, this thesis first defines the church and subsequently analyzes its role as the dominant, influential force upon the separation of church and state. The Founders believed in encouraged the separation of the state institution from the church institution; however, they did *not* believe in preventing religious values from influencing decision-makers in government because they understood the crucial and distinct difference between the religious physical institution and the influence of values on government—specifically, those values used to guide elected and appointed officials’ decisions. The separation of church and state has not denied the political realm a religious dimension; traditionally, the civic sphere has contained space for religiously-informed expressions. Therefore, the church heavily influenced the founding era, which is evidenced in this analysis of the leading figures of the time. Primary source documents, including but not limited to—Thomas Jefferson’s letter to the Danbury Baptists and personal letters to Benjamin Rush in 1803, to Miles King in 1814, to Charles Monticello in 1816, and to William Short in Oct. of 1819; the Declaration of Independence, George Washington’s 1789 Thanksgiving Proclamation and 1796 Farewell Address, James Madison’s “Memorial and Remonstrance against Religious Assessments” and *Federalist No. 51*, Alexander Hamilton’s “The Stand I,” Thomas Paine’s “The Age of Reason,” and Abraham Lincoln’s Second Inaugural Address of 1865, were each analyzed for their religious tone and influence upon these great figures of the nation’s founding.

The church dominated the founding era in response to the mere dearth of Supreme Court case precedence, which acts as the demarcation for the era. Because the Constitution was not ratified until 1788 and the Supreme Court did not assemble until 1790, the Court did not issue any decisions concerning religion until almost 100 years

later (in 1878), when it reviewed *Reynolds v. United States*. Therefore, state and regional laws act as the gauge to analyze how the church dominated this initial epoch. As a result to this analysis, a concrete conclusion steadily reveals itself: the Founders strongly advocated individual religious liberty and protection from government interference. Further secondary source analysis supports the Founders' belief that religious convictions and religiously informed moral values should never be kept separate from public policy, and instead, should not only be expected, but anticipated.

In Chapter 2, the role of the Constitution concerning the separation of church and state is scrutinized via how the Supreme Court has interpreted the First Amendment. The landmark Supreme Court cases on the separation of church and state act as the demarcation for this era and a temperature gauge for American society, thus revealing the nation's priority during this period and exposing the reliance on its religious genetic code to navigate the choppy waters of church and state policy. The Court's decisions in each case provide insight into the policy formed thereafter. Throughout each era, the Court reaffirms and honors the Constitution's intent to protect the freedom to practice one's religion while at the same time ensuring the government does not favor or impose religious beliefs on its citizens. The collective weight of these court rulings represent what Jefferson called the "wall" of separation. The case decisions reveal consistency in the Court's decisions over time despite changing political persuasions or the different political times in which the decisions were made. Throughout each basic grouping of cases—education, state/local religious practices, and government benefits (e.g., unemployment)—the Court's decision confirms that the onus lies on the government, i.e. the concern is for the protection of religion from the government, not the government's



protection from religion. Additionally, the Court's decisions reveal a discernible pattern for the changing nature of the "wall," or the interpretation of the separation. The wall is categorized as either a "Benevolent Barrier" or a "Gatekeeper." The 41 landmark Supreme Court cases analyzed in this chapter underscore the Court's consistency in interpreting the First Amendment as a benevolent barrier; however, the new interpretation for the wall as a gatekeeper has blurred the distinction of the framer's original intent for the First Amendment—e.g. a wall to insure religious liberty.

In the third and final chapter, the analysis focuses on the influence that American culture has had upon the separation of church and state. Today's contemporary era is heavily influenced by its culture as a result to modernization. When modernization is introduced to any society, resistance is formed based on the tenets of traditional society, forming a cultural defense movement to protect its traditional values, institutions, and beliefs: "Organized groups appear to defend old values, which may be embodied in time-honored institutions (or sometimes new ones), centered around religion, the family, or locality—all of which are perceived as under attack."<sup>13</sup> Due to this third era's disparate value system, more cultural groups have sprung up in modern times, thus more defense movements, and ultimately the reason for the cultural influence upon the American contemporary era.

The secularization of culture has likewise influenced the contemporary era and attempted to unmoor itself from its religious identity, its genetic code. Consequently, it has driven a new interpretation of the separation of church and state, as evidenced by the value shift in America and its cultural changes. One could justifiably ask, "How does the

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<sup>13</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front* (Lanham: Rowman and Littlefield, 1996), p. 8-9.

secularization of American culture reinforce the APD theory that the nation will revert back to its founding moment which was premised upon religion?” The answer is that the very action of moving away from religion reinforces America’s identity since it is rooted upon religion. Away from what is the country moving in the first place? Religion. Religion is the nation’s defining element, or “mooring.” Secularization in America—recorded by the number of people identifying with nonaffiliated belief, atheism, cultural religion, and agnosticism—had increased from 8% in 1981 to 28% in 2011.<sup>14</sup> This final chapter focuses on how secular values have increasingly permeated American music, education, and film. The research reveals that the lyrics of music, the curriculum used in education, and the themes highlighted in film have each moved away from religiously-conservative content. While music and film acted as a continuum, education starkly juxtaposed itself by the manner with which it was delivered: American education shifted from religious and home-based means over time to a more secularized, government-funded and led administration. This shift is evidenced in the Supreme Court cases addressing education policy. Because the government took a more active role in education, ensuing Supreme Court cases ultimately represented the demarcation for this final era. Americans now disagree that religion is good, or indeed that it can even be defined. The result was a First Amendment understanding quite at odds with a notion of a wall to insure religious liberty, the benevolent barrier. Instead, the metaphor conveyed the image of a blockade; it was a keeper-of-peace between factions inclined to entangle, a guardian of separate institutional spheres, thus the paradoxical shift between protecting religion from state to protecting the state from religion.

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<sup>14</sup> Joseph O. Baker and Buster G. Smith, *American Secularism: Cultural Contours of Nonreligious Belief Systems*, (New York: New York University Press, 2015), p.7.

As de Tocqueville claimed, the dominating passions, habits, and prejudices that define America's national character are explained by the nation's founding moment, specifically its religious identity. This identity remained steadfast during repeated times of testing, such as witnessed within the Supreme Court's rulings on matters pertaining to the separation of church and state. America's religious nature continually emerged throughout the nation's progression through uncharted territory; it has been consistently protected by the U.S. Constitution, evoked as a defense for the nation's historical traditions, and upheld throughout changing attitudes toward the interpretation of the church and state. However, preserving American religious values amounts to more than just an admirable effort on the Founders' part to ensure religious liberty. The country's history as an ardent defender of the faith represents the byproduct of its birth as a religious nation. The religious identity of America has affected the entire term of the nation's being, shaping its existence into what the world beholds today.

CHAPTER I  
THE CHURCH

*The thirteen colonies had just become the United States of America. In the silence that followed the announcement of the vote, the afternoon sun cast its soft rays through the tall windows—on a brass candlestick standing on a green felt table covering, a carved eagle over the door, a pair of steel-rimmed spectacles lying on a polished desk. The magnitude of what they had done began to weigh upon them, and they realized that they and their countrymen were no longer citizens of England but citizens of a fledgling nation barely a few minutes old. Many stared out the window. Some had tears in their eyes. A few, like Witherspoon, bowed their heads and closed their eyes in prayer...as president of the Continental Congress, John Hancock would legalize the Declaration by placing his famous signature on it. He broke the silence: “Gentlemen, the price on my head has just been doubled!” A month after the vote was taken, delegates who wished to sign the Declaration of Independence began gathering in Philadelphia on August 1. That evening, Samuel Adams spoke to those who had arrived, putting into sharp spiritual focus what they had accomplished: “We have this day restored the Sovereign, to Whom alone men ought to be obedient. He reigns in heaven and...from the rising to the setting sun, may His Kingdom come.”<sup>15</sup>*

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<sup>15</sup> Peter J. Marshall and David B. Manuel Jr., *The Light and the Glory* (Grand Rapids: Revell, 1977), p. 390.

Throughout America's unique, fascinating, commendable, and at times deplorable history, from its founding moment to present-day, a resilient and substantial strand has woven itself throughout the fabric of America's colorful tapestry of society, culture, and law: citizens' organized efforts to seek God; the Protestant Christian religion, to be precise, expressed in varying sects. From the country's zealous Puritan origins from a group of people who "saw themselves as exceptions to the European betrayal of Christian principles...conducting an exercise in exceptionalism,"<sup>16</sup> to Benjamin Franklin's appeal to the president during the Constitutional Convention of 1787:

I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth that God Governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings, that "except the Lord build the House they labour [sic] in vain that build it." I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better, than the Builders of Babel: We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and bye word down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing Governments by Human wisdom and leave it to chance, war and conquest. I therefore beg leave to move-that henceforth prayers imploring the assistance of

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<sup>16</sup> Charles H. Lippy, Robert Choquette, and Stafford Poole, *Christianity Comes to the Americas* (New York: Paragon House, 1992), p. 460.

Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the Clergy of this City be requested to officiate in that Service.<sup>17</sup>

Even to today's importance that religion plays in U.S. elections,<sup>18</sup> America's foundation, history, and cultural architecture has been inextricably fused to its faith in God. Along with that union developed one of the central contributions of the United States to the world: the separation of the church institution from the governing state institution.<sup>19</sup>

The "church" does not refer to the whole body of Christian believers, but in this thesis, refers to the formal institution that affects political perceptions of citizens and constrains their actions over time. The institution of the church holds a religious purpose that determines its motive, establishes norms, assigns roles, and operates within demarcated boundaries.<sup>20</sup> The definition of the church as an institution in this context is crucial; this conceptualization represents the correct dichotomy between two commonly—and incorrectly—conflated concepts: the church's value system and the church's institutional

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<sup>17</sup> James Madison, *Notes Of The Debates in the Federal Convention of 1787* (N.Y. London: W. W. Norton & Company, 1987), p. 209-210.

<sup>18</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front* (Lanham: Rowman and Littlefield, 1996), p. 19-20; Richard Rose and Derek Unwin, "Social Cohesion, Political Parties, and Strains in Regimes," *Comparative Political Studies* (1969), 2:7-67; Philip E. Converse, "Some Priority Variables in Comparative Electoral Research" in *Electoral Behavior: A Comparative Handbook*, ed. Richard Rose (New York: Free Press, 1974), p. 727-45; Arend Lijphart, "Religious vs. Linguistic vs. Class Voting," *American Political Science Review* (1979), 73:442-58; Robert Dahl, *Dilemmas of Pluralist Democracy* (New Haven, Conn.: Yale University Press, 1982), ch. 4; Robert P. Swierenga, "Ethnoreligious Political Behavior in the Mid-Nineteenth Century: Voting, Values, Cultures," in *Religion and American Politics*, ed. Mark A. Noll, (New York: Oxford University Press, 1990), p. 146-71; Mary C. Brennan, *Turning Right in the Sixties: The Conservative Capture of the GOP* (Chapel Hill: University of North Carolina Press, 1995); Emmett H. Buell Jr. and Lee Sigelman, "An Army that Meets Every Sunday? Popular Support for the Moral Majority in 1980," *Social Science Quarterly* (1985), 66:426-34; Sara Diamond, *Roads to Dominion: Right-Wing Movements and Political Power in the United States* (New York: Guilford, 1995).

<sup>19</sup> Robert Booth Fowler et al, *Religion and Politics in America: Faith, Culture, and Strategic Choices*, 4<sup>th</sup> edition (Boulder: Westview Press, 2010), p. 6.

<sup>20</sup> *Ibid*, p. 82.

system. Defined in this way, one can then analyze whether the Founders desired the influence of the church institution upon the government or the influence of the church's value system upon the government. The American citizens' reliance on its value system has been thoroughly documented,<sup>21</sup> therefore this chapter will instead evaluate values as a guiding principle for historical research within documents including, but not limited to: Roger Williams' *The Bloody Tenent of Persecution, for the Cause of Conscience*, *Discussed in a Conference Between Truth and Peace*, the letter to the Danbury Baptist Association from Thomas Jefferson, the First Amendment to the U.S. Constitution, Jefferson's "Virginia Bill for Establishing Religious Freedom," Jefferson's "Second Inaugural Address," Thomas Paine's "The Age of Reason," James Madison's "Memorial and Remonstrance against Religious Assessment," and secondary sources such as Robert N. Bellah's "Civil Religion in America."

The term "separation of church and state" has indelibly grafted its influence into the fabric of American society since it became part of legal doctrine well into 20th century,<sup>22</sup> yet, remarkably, it appears nowhere in the Constitution. What *does* appear in America's structural legal document is what is commonly referred to as the "Establishment and Free Exercise Clause," enumerated under the First Amendment. In this clause, containing but one simple sentence, the Framers masterfully sought to protect their beloved country from government encroachment upon the religious liberty of its citizens. Still fresh from the religious persecution by the Church of England, Protestants

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<sup>21</sup> Walter Dean Burnham, *Critical Elections and the Mainstreams of American Politics*, (New York: Norton, 1970), p. 175-181; J. David Greenstone, *The Lincoln Persuasion: Remaking American Liberalism*, (Princeton, NJ.: Princeton University Press, 1993); Kenneth Wollack, "Assisting Democracy Abroad: American Values, American Interests," *Harvard International Review*, Vol. 32, No. 3 (Fall 2010), p. 20-25; Fred R. Kaen, Allen Kaufman, and Larry Zacharias, "American Political Values and Agency Theory: A Perspective," *Journal of Business Ethics*, Vol. 7, No. 11 (Nov., 1988), p. 805-820.

<sup>22</sup> *Everson v Board of Education* 330 U.S. 1 (1947).



and other groups—such as the English Catholics of Maryland—were keenly sensitive to the slightest hint of government infringement and “snuffed the approach of tyranny in every tainted breeze.”<sup>23</sup> Today however, the average American understands the Establishment Clause as equally protecting each individual’s religion from government interference *and* shielding the government from religious influence, thus the description of a “separation” between the state and the church. Did the Founders originally intend for American government to be protected from religious influence, or solely for religion to be protected from government? There is plenty of evidence of the Founders’ concern for religion remaining free from government interference, but what of the current position that government must be protected from religious influence? In an era when Protestant colonists composed approximately 98 percent of the country, with Roman Catholics accounting for the remaining 1.9 percent,<sup>24</sup> were the Founders genuinely concerned the U.S. government would be harmed by the Christian religion? Did this concern lead to a Constitutional amendment to protect against Christianity’s influence? The Constitution offers some insight into this question, but it is important to study the issues present during that era, the various personal correspondences between the Founders, and the laws of states in addition to federal law, to piece together a contextual answer. This question is crucially important to investigate because if one can understand the Founders’ intellectual world view and presuppositions, one can understand their intent and meaning for religion’s role with respect to political proceedings.

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<sup>23</sup> Edmund Burke, *Speech on Conciliation with the Colonies*, The University of Chicago Press, 1987. <http://press-pubs.uchicago.edu/founders/documents/v1ch1s2.html>

<sup>24</sup> Barry A. Kosmin and Seymour P. Lachman, *One Nation Under God: Religion in Contemporary American Society* (New York: Harmony Books, 1993), p. 28–29.

American Political Development (APD) scholars purport that the founding of a particular culture is both embedded and consequential, meaning, it endures. Therefore, it is necessary to discern an answer to understand its ripple effect on American culture today. The scholarship varies, but each author provides a unique perspective in approaching whether allowing the influence of religious values upon public life would result in a violation of the First Amendment. Moreover, the implications of each perspective point toward the inevitable question: should religious discourse and values be prohibited from the public square in the name of maintaining the separation between church and state? Further study reveals that limited attention has been given to the political impact of one subtle yet crucial truth: the Founders' belief in God, and its implications. The implications of believing in God point toward a moral standard to uphold, a model by which to live, and that belief in turn influences an individual's thought process and subsequent action in any arena, especially a political one.

When one applies the aforementioned research methods, the conclusion is that although the founding fathers did not have one view on religion, (Jefferson's views on the Bible—who denied the supernatural elements of Scripture and the deity of Christ—seemed very different from Patrick Henry's—who was heavily religious and sponsored a general assessment bill that would have taxpayers pay tax to a church of their choice), they did not fear the Christian values of public figures influencing their government; on the contrary, they depended on them as a moral compass, and never intended for American government to exclude their effects on political proceedings. The Founders understood the crucial and distinct difference between the religious physical institution and the influence of values on government—specifically, those values used to guide

elected and appointed officials' decisions. Therefore, to claim religious influence must be prevented in American government and politics under the guise of "separating the church and state," such as the claim made by Isaac Kramnick and R. Laurence Moore—authors of *The Godless Constitution*—is to mistake the First Amendment's original intent and to becloud the function of the Christian religion as an institution vs. an influence of faith-based values. Those values established the bedrock upon which the church operated, and even dominated, America's founding era.

Kramnick and Moore (2005) assert that "the nation's founders, both in writing the Constitution and in defending it in the ratification debates, sought to separate the operations of government from any claim that human beings can know and follow divine direction in reaching policy decisions."<sup>25</sup> Preceding the founding fathers, however, was a man whose ideas made a lasting contribution to the foundation for the separation of church and state: Roger Williams. Kramnick and Moore point to Williams as a fierce supporter of the separation between the church and the state, even to the point of his own exile from the Massachusetts Bay Colony in 1635 for his "radical" opinions. By examining Williams' passionate fight for religious freedom from civil force as the forerunner to the founding fathers, once can fully understand the precedent Williams laid: the separation between institutions, not religious values.

Throughout the 138 short chapters of *The Bloody Tenent of Persecution, for the Cause of Conscience, Discussed in a Conference Between Truth and Peace*, Roger Williams supports his argument that civil authority should not apply to the spiritual authority of the church by demonstrating how the adduced biblical proof texts (along

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<sup>25</sup> Isaac Kramnick and R. Laurence Moore, *The Godless Constitution*, (New York: W.W. Norton & Company, 2005), p. 12.

with some historical arguments) contradict the intolerance of New England. Williams wrote: “Pregnant scriptures and arguments are throughout the work proposed against the doctrine of persecution for cause of conscience.”<sup>26</sup> Williams’ appeal to Scripture for his advocacy for one’s religious morals remaining active in public service rather than private is a point even Kramnick and Moore are unable to dismiss:

Is religious belief ever relevant to public policy? In any society where religion is important and where a large number of people take it with great seriousness as a base of social morality, religion can never be private, in the sense of irrelevant to public issues. Williams lived in a society where religion mattered, and he took religion seriously. He might argue, as he did, that religious leaders had no business telling civil magistrates to intrude into church affairs. But that formula, though it settled much, did not settle everything. In the first place, Williams himself linked religion to morals, and he expected magistrates in Rhode Island to enforce the second table of the Ten Commandments—the commandments that forbade killing, stealing, adultery. An equally significant issue stems from the way religion may affect the general tone of public life and the expectations people have of their political leaders. Suppose someone had declared publicly in Rhode Island that Christ was a bastard and Mary an adulteress. If Williams had been consistent, he would not have held such a person guilty of a civil crime. But

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<sup>26</sup> Roger Williams, “The Bloody Tenent, Of Persecution for Cause of Conscience,” University of Chicago, 2000, accessed April 18, 2018, [http://press-pubs.uchicago.edu/founders/documents/amendI\\_religions4.html](http://press-pubs.uchicago.edu/founders/documents/amendI_religions4.html).

could he possibly have imagined that such a person would make a good governor of the colony?<sup>27</sup>

Williams' passionate fight for the preservation of religious freedom against government interference and of religious values influencing elected officials cultivated the field for further development, beginning with Thomas Jefferson.

The metaphorical “wall of separation” originated from President Thomas Jefferson's letter penned to a group of Baptists in Danbury, Connecticut—twelve years after the ratification of the Bill of Rights and Constitution. The phrase is not mentioned in any of the debates leading to the ratification of the Constitution, or the Constitution's text itself. Instead, the First Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>28</sup> Government sponsorship and coercion of religious activity by American citizens is forbidden by the Constitution. However, it does not mandate hermetic “separation”—exclusion implied—of religion and religious persons from public affairs of state, and specifically, religious persons incorporating their religiously derived values into the public discourse. It is important to note the time lapse between the ratification of the Constitution and the Danbury letter, and even the placement of the Establishment and Free Exercise Clause within the Constitution. The First Amendment was the *first* point of the Bill of Rights, the first point of contention, the first issue the founders wanted to make sure they secured when establishing a new government, especially when compromising with their votes for the ratification of the Constitution. It was their primary area of concern: The First

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<sup>27</sup> Isaac Kramnick and R. Laurence Moore, *The Godless Constitution*, (New York: W.W. Norton & Company, 2005), p. 60.

<sup>28</sup> U.S. Const. amend. I (Massachusetts: Applewood Books), p. 18.

Amendment, not the ninth or tenth. It is significant that Jefferson's Danbury letter came a dozen years after the Bill of Rights when considering what happened directly after the Constitution was ratified. The Bill of Rights was passed September 25, 1789. Later that same day, another resolution was passed establishing a National Day of Prayer, which eventually became Thanksgiving. Elias Boudinot, a representative from New Jersey, proposed:

...a joint committee of both Houses be directed to wait upon the President of the United States, to request that he would recommend to the people of the United States a day of public thanksgiving and prayer to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a Constitution of government for their safety and happiness.<sup>29</sup>

How is this reconciled with the resolution that Congress shall make no law respecting the establishment of religion? They legislated a religious act the same day! This seeming hypocrisy represents not a contradiction, but rather a paradox, "whereby two opposite passions may blaze beside each other,"<sup>30</sup> and buttresses the Founders' position that they were primarily concerned with preventing the *government's* violation of its citizen's individual religious exercise.

Additionally, the original First Amendment proposed by James Madison supports the notion that the Founders' sole goal was forming a bulwark against government's reach

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<sup>29</sup> *Washington Papers*, "Thanksgiving Proclamation," vol 4.  
<http://gwpapers.virginia.edu/documents/thanksgiving-proclamation/>

<sup>30</sup> G.K. Chesterton, *Orthodoxy*, vol. 1, *G.K. Chesterton Collected Works* (San Francisco: Ignatius Press, 1986), p. 352.

into religion. The actual text of the First Amendment as it was proposed by Madison on June 8<sup>th</sup>, 1789 reads: “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner or any pretext infringed.”<sup>31</sup> The original statement did not appear in the final version we read today: “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.”

Perhaps no other figure in American history so radically influenced the course of the nation as Thomas Jefferson and his “wall of separation.” Staunch secularists do not hesitate to reference Jefferson when arguing for a secular polity in which religious influences should be coercively stripped from the public arena. However, Jefferson’s belief in God is commonly overlooked as an important influence upon his participation in governmental affairs. In 1801, the Danbury Baptists wrote a verbose letter to President Jefferson expressing their concern for the lack of protection for religious liberty. They were rightfully concerned, as the history of the Baptists in America was one of severe persecution.<sup>32</sup> Their letter to Jefferson was composed in the hopes he would leave the traditions (of persecution) of his English forefathers behind. Their words to the President read:

Our Sentiments are uniformly on the side of Religious Liberty—That Religion is at all times and places a Matter between God and Individuals—That no man ought to suffer in Name, person or effects on account of his religious Opinions—That

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<sup>31</sup> *Annals of Congress* of Congress (Washington, DC: Gales and Seaton, 1834), p. 451.  
<http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=001/llac001.db&recNum=227>

<sup>32</sup> Albert Henry Newman, *A History of the Baptist Churches in the United States* (New York: The Christian Literature Company, 1894), p. 22-28, 32-34, 37-38, 45, 48-49, 54.

the legitimate Power of civil Goverment [*sic*] extends no further than to punish the man who works ill to his neighbor...<sup>33</sup>

The Danbury letter deals with a substantive core within the rule of law: the role of government deals with actions, not opinions...nor thoughts, for that matter. The Baptists came to Jefferson explaining how they understood the sphere of civil government. His response to the Baptists stated:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and State.<sup>34</sup>

In light of Jefferson’s letter, the *people* built the wall through their legislature and within the language of the First Amendment. The government never built the wall. Thomas Jefferson was the first person on record to use the term and he cites it as the activity of the people. Second, the letter of the Danbury Baptists, which forms the question of the separation of church and state, was a question of sphere sovereignty. President and CEO

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<sup>33</sup> *The Papers of Thomas Jefferson* (Princeton University Press, 2008), p. 407-409.  
<https://jeffersonpapers.princeton.edu/selected-documents/danbury-baptist-association>

<sup>34</sup> Thomas Jefferson, “Letter to the Danbury Baptist Association,” in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 88.



of The American Policy Roundtable—a non-partisan research organization—summarizes Jefferson’s underlying ethos in his response to the Danbury Baptists:

The Founders, who yielded to truth, clearly saw...that God has established institutions among men by which to govern, which first includes self-government, then government in the arena of the family, then in the arena of the church, in the body of Christ called together in assembly, and finally, in civil government. They understood the church is an authority given by God and civil government is an authority given by God. They can co-exist, but they are in fact different, distinct, and separate. That’s the definition of the separation of the church and state: the church is not the government, and the government is not the church. It’s no more difficult than that. When we read the Baptist letter to Jefferson, Jefferson’s response is: “Don’t worry, there is a wall of separation between these two spheres, and it’s not my intention as president of the United States to breach that wall.” Truth governs all. This is a truth-based system...so when they started their country, they went to the source; they went to the truth and ordered the structures of civil government according to it, and that truth just happens to be crystal clear: that government is one thing, and church is another.<sup>35</sup>

Third, Jefferson only addresses the *government’s* role regarding religion, but mentions nothing of religious influence upon government. What was the role of government, according to Jefferson? “The legislative powers of government [must] reach actions only, and not opinions.” The “Virginia Bill for Establishing Religious Freedom”

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<sup>35</sup> David Zanotti, “The Separation of Church and State: Part I,” Lecture, The American Mission Series from The American Policy Roundtable, Strongsville, Ohio, 2011, CD.

heralded Jefferson's perspective on what the government was entitled when it came to one's personal beliefs:

...The opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or suffer from his own.<sup>36</sup>

Because one's opinion is sovereignly formed and acted upon by an individual, the government has no authority to deem it invalid. Therefore, Jefferson did not support a governmental right or role that excluded a person's religious opinion from the public square. He emphasized this point during the delivery of his second inaugural speech in March 1805:

In matters of religion, I have considered that its free exercise is placed by the constitution independent of the powers of the general [i.e., federal] government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the constitution found them, under the direction

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<sup>36</sup> Thomas Jefferson, "Virginia Bill for Establishing Religious Freedom," in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 331.

and discipline of State or Church authorities acknowledged by the several religious societies.<sup>37</sup>

The issue of protecting government from religion vs. protecting religion from government amounts to something similar. It could be argued that many in the 18th century were not worried about an atheistic government oppressing religious believers in general because no atheistic government existed at the time. The fear, it seems then, was more that the state would act as the coercive arm of a church and punish religious dissenters, as often had occurred in Europe's history, thus Jefferson's desire for a "wall of separation." By keeping the religious institution out of government one also protected the religious freedom of those who dissented from the beliefs of the official state church. However, it is crucial to distinguish the difference between the influence of the church institution and the influence of its Christian values upon government as exerted by both its parishioners and religious leaders. Jefferson wanted a wall of separation between the church institution and government, not a wall of separation between the government and Christian values, as is espoused in modern times.

The most famous American document aside from the Constitution of the United States is the Declaration of Independence. Perhaps no other document conveys Jefferson's sentiments on whether religious values should influence the political arena more clearly than the Declaration of Independence. Although a Congressional Committee consisting of Benjamin Franklin, John Adams, and Thomas Jefferson drafted the document, it was decided Thomas Jefferson should write it. Drawing from extensive

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<sup>37</sup> "Thomas Jefferson Second Inaugural Address," Retrieved November 30, 2016 from Lillian Goldman Law Library, New Haven, *The Avalon Project*. [http://avalon.law.yale.edu/19th\\_century/jefinau2.asp](http://avalon.law.yale.edu/19th_century/jefinau2.asp)

literature, Jefferson aimed to capture the public opinions and feelings present in America at the time, not to come up with new ideas. Standing in direct opposition to the secularist argument, Jefferson referenced God throughout his elegant declaration. Robert N. Bellah summarized Jefferson's references in his essay "Civil Religion in America," writing:

There are four references to God. The first speaks of the "Laws of Nature and of Nature's God" that entitle any people to be independent. The second is the famous statement that all men "are endowed by their Creator with certain inalienable Rights." Here Jefferson is locating the fundamental legitimacy of the new nation in a conception of "higher law" that is itself based on both classical natural law and biblical religion. The third is an appeal to "the Supreme Judge of the world for the rectitude of our intentions," and the last indicates "a firm reliance on the protection of divine Providence." In these last two references, a biblical God of history who stands in judgment over the world is indicated. The intimate relation of these religious notions with the self-conception of the new republic is indicated by the frequency of their appearance in early official documents.<sup>38</sup>

One of the most influential documents of all time was written by a man who was influenced by none other than the very faith in God that strict separationists argue is inappropriate in the political public square. How can this be from the same author that penned those famous Danbury words? Bellah addressed this seeming contradiction:

Considering the separation of church and state, how is a president justified in

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<sup>38</sup> Robert N. Bellah, "Civil Religion in America," *Dædalus, Journal of the American Academy of Arts and Sciences*, Winter 1967, Vol. 96, No. 1, p. 121.

using the word “God” at all? The answer is that the separation of church and state has not denied the political realm a religious dimension. Although matters of personal religious belief, worship, and association are considered to be strictly private affairs, there are, at the same time, certain common elements of religious orientation that the great majority of Americans share. These have played a crucial role in the development of American institutions and still provide a religious dimension for the whole fabric of American life, including the political sphere. This public religious dimension is expressed in a set of beliefs, symbols, and rituals that I am calling American civil religion. The inauguration of a president is an important ceremonial event in this religion. It reaffirms, among other things, the religious legitimation of the highest political authority.<sup>39</sup>

According to Bellah, the very nature of American society has been interlinked with religion to such a degree as to earn the title of “American civil religion,” which does not deny the influence of religion upon the political realm.

The separation of the institution of the church from the institution of the government is not only good, but necessary. The Church of England’s oppressive and hierarchical form of government, seizing the role of administering authority in both the church and state, had a long, tyrannical history of harassing *any* non-conformists, particularly Puritans.<sup>40</sup> This ultimately led to the original Puritan settlers fleeing to America to escape religious persecution in England. The colonists’ distrust of the church institution, acting as the government, originated from its historical threat to their religious

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<sup>39</sup> Ibid.

<sup>40</sup> John Morrill, *Reactions to the English Civil War 1642–1649* (New York: Palgrave, 1982), p. 90.

freedom. This threat was arrested by the Founders' intent of prevention through foresight, implemented in the First Amendment and contrasted with the actual prevention of it through practice. The First Amendment prohibited Congress from establishing any one particular religion and protected freedom of speech and religious exercise at the federal level. It did not prohibit the influence of religion upon citizens in positions of government, and it did not apply to the states until the Incorporation Doctrine was implemented "through which selected provisions of the Bill of Rights were made applicable to the states through the Due Process clause of the Fourteenth Amendment,"<sup>41</sup> evidenced in the case, *The People v. Ruggles*.

In 1811, Justice James Kent of New York's highest court presented the case of a man convicted of questioning the divinity of Christ. Kent upheld the state law prohibiting insults against the Christian religion as a crime of blasphemy.<sup>42</sup> How could the early state courts in the American republic rule in such a manner if the federal government was forbidden from establishing one particular religion or from making any law respecting religion? Such ruling by the states only disregarded federal law. Nothing in the Constitution prohibited states from establishing a state church, as opposed to a federal one, much less proposed statutes to protect Christianity in general terms. By recognizing that the First Amendment only applied to the federal level, the Founders did not consider the Christian influence upon state government a threat, and thus allowed the state's burgeoning practice of incorporating religion into the governing arena. The overwhelming Christian influence upon government as embodied in the people entrusted

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<sup>41</sup> "Incorporation Doctrine," Retrieved November 30, 2016, from Cornell University Law School, Ithaca, Legal Information Institute Web site: [https://www.law.cornell.edu/wex/incorporation\\_doctrine](https://www.law.cornell.edu/wex/incorporation_doctrine)

<sup>42</sup> James Kent, "The People v. Ruggles," in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 363-364.

to run it during this epoch emerged at the forefront of the state level because the Founders did not consider Christian values a threat, but they did view the institution of the church placed in governmental authority as perilous.

Court cases at the state level like *Ruggles* underscore the heavy influence of the church during the founding era, and supplements the dearth of Supreme Court case precedence to act as a demarcation for the era. State laws act as the gauge to analyze how the church dominated this initial epoch. For example:

...Eleven of the thirteen states had religious tests for public offices in their constitutions in 1787. Even in Rhode Island, once the most religiously pluralistic and liberal state, where small numbers of Catholics and Jews freely worshipped, only Protestants could vote or hold office. New Hampshire, New Jersey, both Carolinas, Vermont, and Georgia also required officials to be Protestants. Massachusetts and Maryland insisted on belief in the Christian religion as a qualification for office. Pennsylvania required its officials to be Protestants who believed in God and the divine inspiration of the Old and New Testaments; in Delaware all elected and appointed public officials were required to profess 'faith in God the father, and in Jesus Christ His only son, and in the Holy Ghost, one God blessed forevermore.' Several state constitutions also required officeholders to acknowledge that God was a 'rewarder of the good and punisher of the wicked.'<sup>43</sup>

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<sup>43</sup> Isaac Kramnick and R. Laurence Moore, *The Godless Constitution*, (New York: W.W. Norton & Company, 2005), p. 30.

Additionally, America, like Great Britain, operated on Common Law: “the tradition established by custom, interpreted by judges, and passed on through precedents or preceding judicial decisions.”<sup>44</sup> This means that the *Ruggles* court ruling was based on previous decisions, and up until that point, decisions had been made on “custom and tradition.” It is a powerful glimpse into the ethos of American culture and its approach to issues indigenous to the era. Justice Kent cited several previous cases where the ruling upheld blasphemy of Christ or the Holy Scriptures as “punishable at common law,” and used these cases as precedent for his ruling. Blasphemy corrupted the good character of the people, and “whatever strikes at the root of Christianity tends manifestly to the dissolution of civil government.”<sup>45</sup> Because the collective community professed Christianity as their faith, Kent wrote that this blasphemy, “in respect to the obligations due to society, is a gross violation of decency and good order.”<sup>46</sup> Therefore, the public peace and safety was at risk. Kent directly addressed his justification for ruling in such a manner by addressing what he believed was the founder’s intent in the First Amendment:

Though the Constitution has discarded religious establishments, it does not forbid judicial cognizance of those offenses against religion and morality which have no reference to any such establishment, or to any particular form of government, but are punishable because they strike at the root of moral obligation, and weaken the security of the social ties. The object of the 38th article of the constitution, was, to “guard against spiritual oppression and intolerance,” by declaring that “the free

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<sup>44</sup> James Kent, “The People v. Ruggles,” in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 363-364.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.



exercise and enjoyment of religious profession and worship, without discrimination or preference, should forever thereafter be allowed within this State, to all mankind.” This declaration (noble and magnanimous as it is, when duly understood) never meant to withdraw religion in general, and with it the best sanctions of moral and social obligation from all consideration and notice of the law. It will be fully satisfied by a free and universal toleration, without any of the tests, disabilities, or discriminations, incident to a religious establishment. To construe it as breaking down the common law barriers against licentious, wanton, and impious attacks upon Christianity itself, would be an enormous perversion of its meaning. The proviso guards the article from such dangerous latitude of construction, when it declares that “the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this State.” The preamble and this proviso are a species of commentary upon the meaning of the article, and they sufficiently show that the Framers of the Constitution intended only to banish test oaths, disabilities and the burdens, and sometimes the oppressions, of church establishments; and to secure to the people of this State freedom from coercion, and an equality of right, on the subject of religion. This was no doubt the consummation of their wishes.<sup>47</sup>

The great figures of the American founding epoch—George Washington, Alexander Hamilton, James Madison, Thomas Jefferson—strongly affirmed the idea of religious freedom as well as the idea that religious influence on the government is not

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<sup>47</sup> Ibid., p. 364-365.

prohibited by the government, but is a useful support for public virtue. Each recognized the dichotomy between the spirit of the Christian faith that informs the behavior and decisions of individuals, and the law of it as a governing institution if it is made officially part of the government. James Madison denounced any usefulness in legalizing religion, pointing toward the tyrannical examples of the result when it had been done in the past, and wrote in his “Memorial and Remonstrance Against Religious Assessments”:

What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty may have found an established clergy convenient auxiliaries.<sup>48</sup>

On the other hand, he appealed for God’s help, entreating:

...The Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand turn their councils from every act which would affront his holy prerogative or violate the trust committed to them, and on the other, guide them into every measure which may be worthy of his [blessing, may re] dound to their own praise, and may establish more firmly the liberties, the prosperity, and the happiness of the Commonwealth.<sup>49</sup>

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<sup>48</sup> James Madison, “Memorial and Remonstrance against Religious Assessments,” in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 329.

<sup>49</sup> *Ibid.*, p. 330.

Madison's Christian faith clearly influenced his behavior in civil government, but he adamantly opposed the legal establishment of that same faith. Likewise, Alexander Hamilton believed that liberty itself hinged upon the Christian faith. The French Revolution, which essentially dechristianized France—destroying all Catholic religious opinion, practice, and religion itself—was a “disgusting spectacle” to Hamilton. He argued that religion is essential and not harmful to liberty when he wrote in “The Stand I”: “He [the liberty-loving politician] knows that *morality* overthrown (and *morality must* fall with religion), the terrors of despotism can alone curb the impetuous passions of man, and confine him within the bounds of social duty.”<sup>50</sup> In other words, liberty is forsaken once religion is forsaken because morality is derived from religion, and morality is the only thing that keeps man's “impetuous passions” in check. Without a moral compass, one must resort to despotism to keep men bound within proper governance. Hamilton reinforced Madison on this point, for Madison addressed the same issue in *The Federalist No. 51* when he famously captured the idea that men need to be checked by others in their government because men *need* morality. If they did not, then government would not be needed:

But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the

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<sup>50</sup> Alexander Hamilton, *The Works of Alexander Hamilton*, ed. Henry Cabot Lodge (Federal Edition) (New York: G.P. Putnam's Sons, 1904). In 12 vols. Vol. 6. Chapter: *the stand I* (*From the New York Commercial Advertiser*).

governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.<sup>51</sup>

These thoughts were not isolated; each interknit the prevailing ethos of the era. George Washington wrote in his 1796 Farewell Address:

Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labour to subvert these great Pillars of human happiness, these firmest props of the duties of Men and citizens...<sup>52</sup>

Additionally, Madison's plea for God's guidance in his "Remonstrance" reiterated Washington in his 1789 "Thanksgiving Proclamation," as he earnestly asked for God's guidance for all to perform their responsibilities, regardless of station, and declared the first national day of thanksgiving to God for:

His kind care and protection of the People of this country previous to their becoming a Nation, for the signal and manifold mercies, and the favorable interpositions of his providence, which we experienced in the course and conclusion of the late war, for the great degree of tranquillity, [*sic*] union, and plenty, which we have since enjoyed, for the peaceable and rational manner in which we have been enabled to establish constitutions of government for our

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<sup>51</sup> James Madison, "The Federalist Papers: No. 51" (Connecticut: Lillian Goldman Law Library, 2002), [http://avalon.law.yale.edu/18th\\_century/fed51.asp](http://avalon.law.yale.edu/18th_century/fed51.asp)

<sup>52</sup> George Washington, "Farewell Address," in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 76.

safety and happiness, and particularly the national One now lately instituted, for the civil and religious liberty with which we are blessed, and the means we have of acquiring and diffusing useful knowledge and in general for all the great and various favors which he hath been pleased to confer upon us.<sup>53</sup>

But what about those who have a more secular reading of the American founding? After all, was not Thomas Jefferson a Deist, a man who respected the moral doctrine of the Bible but denied the supernatural elements of Scripture and the deity of Christ? Likewise, one is hard-pressed to read a Deist tract that attacked the legitimacy of the Bible like “The Age of Reason” by Thomas Paine and conclude he supported religion in government. Contemporary titles such as *The Godless Constitution* (2005) build upon this secularized argument by claiming the lack of any mention of God in the Constitution was a conscious effort on the Framers' part, and intended to avoid the bloody religious clashes that so defined the history of Europe. Robert Ingersoll—an ardent speaker on behalf of agnosticism in the 1890s and identified as “the most intelligent man in America” by the likes of Mark Twain, H.L. Mencken, and Oscar Wilde—suggested it would even become a crime to deny the existence of God if He were acknowledged in the Constitution.<sup>54</sup> While at first glance one can conclude Paine and Jefferson were adamantly opposed to religion intermingling with government, rightly so since the two institutions must be kept separate in order for both to flourish, upon further study one recognizes that limited attention has been given to the political impact of one subtle yet crucial truth: their belief

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<sup>53</sup> George Washington, “Thanksgiving Proclamation,” in *The American Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, 2002), p. 69.

<sup>54</sup> Robert Ingersoll, “God in the Constitution,” in *American Political Thought* (6<sup>th</sup> ed.), ed. Kenneth M. Dolbeare and Michael S. Cummings (Washington DC: CQ Press, 2010), p.343.

in God, and its implications. The nature of the argument does not rest upon whether these thinkers supported or opposed the separation of the church and state; they passionately did. The question is whether they believed the influence of the Christian faith upon government should be prevented.

While Bellah (a secondary source) addressed the gap in previous research considering the implications of the Founders' faith in God, Thomas Paine's writing resolves conflicts amongst seemingly contradictory previous studies concerning his attack on the Christian Church. Highlighting what he saw as corruption of the Christian Church, Thomas Paine criticized its efforts to acquire political power in his pamphlet "The Age of Reason." Throughout his challenges to institutionalized religion, a steady affirmation emerges: Paine did not reject the existence of God. Instead, he recognized the dichotomy between the influence of the church institution and the influence of faith. The implications of believing in God again point toward a moral standard to uphold and a model by which to live, which ultimately dictates an individual's behavior. In "Part First, Section 13" of "The Age of Reason," Paine wrote: "The God in whom we believe is a God of moral truth, and not a God of mystery or obscurity."<sup>55</sup> Paine elaborated in "Section 14" to say that this moral truth must be practiced in the public square and not kept hidden as a recluse:

...The practice of moral truth, or, in other words, a practical imitation of the moral goodness of God, is no other than our acting toward each other as He acts benignly toward all. We cannot serve God in the manner we serve those who

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<sup>55</sup> Thomas Paine, *The Age of Reason: Part First, Section 13* (Philadelphia: Independence Hall Association, 1999). Retrieved November 30, 2016. <http://www.ushistory.org/paine/reason/reason13.htm>.

cannot do without such service; and, therefore, the only idea we can have of serving God, is that of contributing to the happiness of the living creation that God has made. This cannot be done by retiring ourselves from the society of the world and spending a recluse life in selfish devotion.<sup>56</sup>

Furthermore, in “Section 15” we read:

...The moral duty of man consists in imitating the moral goodness and beneficence of God, manifested in the creation toward all his creatures. That seeing, as we daily do, the goodness of God to all men, it is an example calling upon all men to practise [*sic*] the same toward each other; and, consequently, that everything of persecution and revenge between man and man, and everything of cruelty to animals, is a violation of moral duty.<sup>57</sup>

How are men able to practice this goodness to all? As their moral duty, they are to act upon the influence of their faith in God. To ban their religious influence from the civil government, according to Paine, would be to ban moral goodness.

Writing to William Short on October 31, 1819, Thomas Jefferson wrote he was convinced that the teachings of Jesus constituted the "outlines of a system of the most sublime morality which has ever fallen from the lips of man."<sup>58</sup> Because of his belief in the superiority of Christ's teaching, Jefferson wrote to Charles Thomson Monticello in

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<sup>56</sup> Ibid. *Part First, Section 14.*

<sup>57</sup> Ibid. *Part First, Section 15.*

<sup>58</sup> *The Letters of Thomas Jefferson: To William Short, with a Syllabus Monticello*, (University of Groningen, 1994) Retrieved November 30, 2016. <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl259.php>

1816:

I too have made a wee little book, from the same materials, which I call the Philosophy of Jesus. It is a paradigma of his doctrines, made by cutting the texts out of the book, and arranging them on the pages of a blank book, in a certain order of time or subject. A more beautiful or precious morsel of ethics I have never seen. It is a document in proof that I am a real Christian, that is to say, a disciple of the doctrines of Jesus...”<sup>59</sup>

Jefferson’s patchwork Bible provided him with his moral groundwork for everyday life, and consequently, his political life. “I must ever believe that religion substantially good which produces an honest life, and we have been authorized by One whom you and I equally respect, to judge of the tree by its fruit,”<sup>60</sup> he wrote to Miles King in 1814. An “honest life” was the product of religion, according to Jefferson, and one such life could only be produced by religion, not government. Jefferson’s sincere attachment to the teachings of Jesus influenced him deeply. When writing to Benjamin Rush in 1803, Jefferson stated: “To the corruptions of Christianity I am indeed, opposed; but not to the genuine precepts of Jesus himself. I am a Christian, in the only sense in which he wished any one to be; sincerely attached to his doctrines, in preference to all others; ascribing to

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<sup>59</sup> *The Letters of Thomas Jefferson: To Charles Thomson Monticello*,” (University of Groningen, 1994) Retrieved November 30, 2016. <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jeff239.php>

<sup>60</sup> “Thomas Jefferson to Miles King, 26 September 1814,” *Founders Online*, National Archives, last modified October 5, 2016, <http://founders.archives.gov/documents/Jefferson/03-07-02-0495>. [Original source: *The Papers of Thomas Jefferson*, Retirement Series, vol. 7, 28 November 1813 to 30 September 1814, ed. J. Jefferson Looney. Princeton: Princeton University Press, 2010, p. 704–706.] <http://founders.archives.gov/documents/Jefferson/03-07-02-0495>



himself every human excellence; and believing he never claimed any other.”<sup>61</sup> Jefferson’s view towards religion and his faith in God not only influenced his career as one of America’s greatest political leaders, but also influenced one of the most revered artifacts of all time: The Declaration of Independence.

Both Thomas Paine and Thomas Jefferson have been historically referred to as the leading figures of a secular American founding. With their Deist-like characteristics, one can see how their ambivalent tones laid fertile ground for the argument that Jefferson was a staunch Enlightenment secularist and Paine nothing more than a Deist. Despite the argument made for America’s secular founding, both figures did in fact have a faith in God that governed their lives. This personal faith, which must “...endeavor to imitate him [the Deity] in every thing moral, scientific, and mechanical,”<sup>62</sup> firmly supported each in his belief of a moral God who expects the active believer to engage his particular sphere of influence. They, in addition to the Founders, intuitively understood “...where the instruction which enlightens the understanding is not separated from the moral education which amends the heart,”<sup>63</sup> one will find the true intent within the Founders’ First Amendment.

Religious values have played a central role in the major moral debates that have confronted the American nation over the centuries. Few moral struggles have been more intense or long running in American history than the issues of slavery and civil rights, and their impact on race relations in American history. Considering the crusade against

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<sup>61</sup> *The Letters of Thomas Jefferson: To Dr. Benjamin Rush*,” (University of Groningen, 1994) Retrieved November 30, 2016. <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jeff153.php>

<sup>62</sup> James Tepfer, “The Religious and Political Philosophy of Tom Paine,” Retrieved November 30, 2016, [http://www.thomaspaine.us/article\\_tepfer02.html](http://www.thomaspaine.us/article_tepfer02.html)

<sup>63</sup> Alexis de Tocqueville, *Democracy in America* (book 1, ch. 17, p. 18) Retrieved November 30, 2016, [http://xroads.virginia.edu/~hyper/detoc/1\\_ch17.htm](http://xroads.virginia.edu/~hyper/detoc/1_ch17.htm)

slavery<sup>64</sup> and the role of values that influenced both the North and South, President Lincoln pondered:

If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether." With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.<sup>65</sup>

For Lincoln, this decision to end the war was God's. Lincoln used biblical images to argue that the American Civil War may have been divine punishment for the nation's sins

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<sup>64</sup> Robert Booth Fowler et al, *Religion and Politics in America: Faith, Culture, and Strategic Choices*, 4<sup>th</sup> edition (Boulder: Westview Press, 2010), p. 13.

<sup>65</sup> Abraham Lincoln, "Second Inaugural Address of Abraham Lincoln," March 4, 1865, *The Avalon Project* (1996), [http://avalon.law.yale.edu/19th\\_century/lincoln2.asp](http://avalon.law.yale.edu/19th_century/lincoln2.asp).

and failure to live up to high moral principles. While the role of religion was complex, Christian moral sentiments played a key role in the abolitionist and civil rights movements, as seen by looking at the speeches and writings of President Abraham Lincoln, William Lloyd Garrison<sup>66</sup> and Dr. Martin Luther King,<sup>67</sup> as well as the Temperance Movement.<sup>68</sup> The span of influence that religious values has had upon the formation of America throughout its history is expansive. Consider the influence of circuit-riding preachers on the wild frontier and their role in American democracy:

[The]...preachers endured many hardships to spread their message to the masses and brought with them a democratic faith that all are equal before God. Many people were profoundly moved by this populist Christianity and began refusing to see themselves as inferior to others. They pushed for elimination of property restrictions on voting and other measures that advanced democratization. By the late 1820s mass democracy (at least for white males) had come to America, propelled in part by Protestant evangelical forces in the young nation.<sup>69</sup>

When studying the intent behind the concept of the American separation of church and state according to the distinct analytical fields of the time—correlating state laws, the Founders’ personal correspondences, the issues specific to that era—a concrete conclusion reveals itself: the Founders strongly advocated individual religious liberty and protection from government interference. Further evidence supports the Founders’ belief

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<sup>66</sup> See William Lloyd Garrison’s “Address to the Colonization Society,” July 4, 1829, <http://teachingamericanhistory.org/library/document/address-to-the-colonization-society/>.

<sup>67</sup> See Dr. Martin Luther King’s “Letter from a Birmingham Jail,” April 16, 1963, [http://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html).

<sup>68</sup> Robert Booth Fowler et al, *Religion and Politics in America: Faith, Culture, and Strategic Choices*, 4<sup>th</sup> edition (Boulder: Westview Press, 2010), p. 14-16.

<sup>69</sup> Ibid, p. 17.

that religious convictions and religiously informed moral values should never be kept separate from public policy, and instead, should not only be expected but anticipated. The dichotomy between the institution of the church and the influence of faith-based values on government sharply demarcates each unique sphere, which the Founders intuitively understood. They never intended America to be a religious, explicitly Christian nation, but they also did not envision America as a secular republic. Instead, they strongly affirmed the idea of religious freedom as well as the idea that religion was and is a useful buttress for public virtue, not something to exclude from the public square. Therefore, when considering the original purpose for separating the institution of the state from the institution of the church—to protect religion from government infringement—the modern perspective that the government must be protected from religious influence crumbles.

## CHAPTER II

### THE CONSTITUTION AND THE CHANGING NATURE OF THE WALL

*The constitution, the idea of constitutionality, has...come to occupy a crucial position. It stands somewhere between the daily products of political machinery and the moral sense of a culture; it is a peculiar merging of the political and the moral, and it gives to our politics a moral flavor and to our moral controversies a political form. On the one hand it keeps politics always subject to moral demands and prevents it from moving off on its own into a condition in which it would need to rest more heavily on sanction or coercion. On the other hand, providing the common ground on which our political life is played, it makes less urgent the drives for religious and moral orthodoxy and sustains such separations as is possible of church and state. The constitution is thus both a political and a moral charter.<sup>70</sup>*

-Joseph Tussman

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<sup>70</sup> Joseph Tussman, ed., *The Supreme Court on Church and State*, (New York: Oxford University Press, 1962), p. VIII.

As Joseph Tussman (1962) alluded to in the above passage, the Constitution of the United States acts not only as the nation's moral apparatus but as its political structure as well. Nothing speaks more firmly on the matter of the separation of church and state than the U.S. Constitution, the progenitor of the statute. "The word *constitution* denotes the body of rules, written and unwritten, that constitute the character of a particular government,"<sup>71</sup> one scholar noted. This "character" of American government stands not only as testimony to its religious identity but to its history of self-wrestling when defining the two complex spheres of church and state, especially when adjudicating to what realms they must adhere...can the religious identity of America be stripped from the nation by rule of the Court? No, it cannot, because that was never the intention of the First Amendment, as the analysis of this chapter shows.

Because "the Constitution means what the Supreme Court says it means,"<sup>72</sup> the activity within the halls of the Court define the Constitution itself, and it is within the Supreme Court that analysis of the Constitution must form. "We must never forget that it is a *constitution* we are interpreting," wrote Justice John Marshall in *McCulloch v Maryland*, enunciating the fact that "a constitution, unlike a statute, is a general framework of government designed to endure for all ages."<sup>73</sup> The landmark Supreme Court cases on the separation of church and state act as a temperature gauge for American society and reveals the nation's development throughout its history, testifying to the embedded religious founding upon which the nation stands. Rather than a

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<sup>71</sup> Richard J. Regan, *The American Constitution and Religion*, (Washington: Catholic University of America Press, 2013), accessed January 11, 2018. ProQuest Ebook Central, p. 3.

<sup>72</sup> Cass R. Sunstein, "Why Does the American Constitution Lack Social and Economic Guarantees," quoted in Michael Ignatieff, *American Exceptionalism and Human Rights*, (Princeton, N.J.: Princeton University Press, 2005), p.92.

<sup>73</sup> Richard J. Regan, *The American Constitution and Religion*, (Washington: Catholic University of America Press, 2013), accessed January 11, 2018. ProQuest Ebook Central, p. 26.

subsequent ripple effect from its religious founding, the nation's Supreme Court cases on the separation of church and state represent rather the entire body of water running its course. The separation of church and state remains inextricable from American identity and domestic policy as a result to the nation's inherently religious origins.

The nation's reliance on its religious genetic code to navigate the choppy waters of church and state policy has had a long history dating back to Thomas Jefferson's 1802 letter to the Danbury Baptists.<sup>74</sup> The spirit of the Danbury letter supports Jefferson's conviction that he wanted a "wall of separation" between the church institution and government institution, not a wall of separation between religious values and government. Indeed, as Joseph Tussman wrote in his seminary book, *The Supreme Court on Church and State*, the wall of separation between the church and state,

...Tells us little about the ways in which what is separate may be related. We also speak, for example, of the "separation of powers" in our government, and this suggests differing jurisdictions and a measure of independence. But does it also preclude all forms of cooperation and support? I do not argue the case for 'aid'; I simply point out that "separation" does not settle the question even if "separation" is taken as canonical.<sup>75</sup>

The Jefferson spirit has since reverberated throughout the nation's policy on church and state. The goal of this chapter is to outline the Supreme Court cases on the separation of church and state to first provide evidence for the Supreme Court's

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<sup>74</sup> See chapter 1.

<sup>75</sup> Joseph Tussman, ed., *The Supreme Court on Church and State*, (New York: Oxford University Press, 1962), p. XVI.



interpretation of the Constitution's First Amendment: initially ruling and thereafter upholding the *government's* role toward religion, not religion's role toward government, thus the onus is placed upon the former. In the following Supreme Court cases, the remarkable evidence underscores the conclusion that each case addresses either 1.) "Reigning in" the government or 2.) "Permitting" the government to act in the appropriate manner concerning religion, as laid out in either the Establishment clause or the Free Exercise clause. There is no evidence to suggest the First Amendment was concerned about the influence of religious values upon the government. Second, this chapter identifies the emergence of a pattern as a result to the Supreme Court's rulings. The premise for identifying this pattern is the analysis of the *nature* of the court case: the nature of the barrier or "wall of separation" between the church and state is identified as either a "Benevolent Barrier" or a "Gatekeeper" in each case. This chapter argues that the Founders originally intended a benevolent barrier between the institutions of the church and state as a mechanism to ensure religious liberty via a bulwark committed to the alignment of the separation in such a way as to buttress the strength of both religion and government, since government cannot flourish without the guidance of morality. However, a new interpretation of the wall has emerged throughout the history of Supreme Court cases concerning the issue of the separation of church and state; this is the gatekeeper interpretation. As evidenced in the following court cases, this interpretation of the barrier between the separation of church and state is that it has acted more as a guardian, or referee, appeasing two squabbling siblings; it has adjudicated individual spheres at odds with one another rather than the original intention to complement one another. Despite the emergence of the new interpretation for the gatekeeper role, the

Supreme Court has remained consistent when ruling in cases according to the Founders' original purpose for a benevolent barrier between the two institutions since the influence of religious values upon government did not act as a burden to the Founders' conscience.

Using the First Amendment lens, it should not be surprising that the Founders' sentiments toward government and religion—believing there is no reason to fear religious values influencing the public or government domain—remain in place, for it is explicitly established with the First Amendment: “*Congress* [emphasis added] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>76</sup> The role of government has been the paramount concern since the nation's founding; however, its role has been less than undisputed since its commissioning:

The opening words of the First Amendment of the Constitution of the United States sought to avoid, not to borrow trouble. But they have troubled us a great deal and the storm has not yet passed. For they touch upon the relation of the religious to the secular life; and all attempts at either separation or integration of these spheres or aspects of human culture seem to exact a price we are pained to pay.<sup>77</sup>

The contentious issue is not whether an official church be established; the American public vehemently opposes the notion. The issue lies with:

The question of aid and cooperation, on the question of whether government is furthering a legitimate public purpose when it acts to encourage, support, or aid

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<sup>76</sup> US Constitution, amend. 1.

<sup>77</sup> Joseph Tussman, ed., *The Supreme Court on Church and State*, (New York: Oxford University Press, 1962), p. XIII.

the institutions of religious life or whether it is precisely the point of the ‘no establishment’ clause that precludes government action to this end.<sup>78</sup>

Although there is skepticism in the field of American Political Development (APD) on the role of the Supreme Court in acting as the final arbiter for the Constitution,<sup>79</sup> this chapter seeks to analyze the Court’s interpretation of the First Amendment due to the case evidence provided for the separation of church and state. Additionally, the Supreme Court has traditionally acted as the plenary authority on the Constitution and acts as a catalyst for the evolution of the separation between the church and state:

Plenary authority means that changing any aspect of politics entails bumping against authority already in existence...the question will always be how much of what is there gives way. What stays the same will be just as important for the specific effect it will have on the future staying power—the viability—of the change in question and important as well for the processes of historical construction that will move forward from that point.<sup>80</sup>

Plenary authority allows for “competing and conflicting authorities on a cite as well as any space that might be opened for new authority by...enforcement mechanisms; it accommodates activities that might insinuate themselves between the lines of existing

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<sup>78</sup> Joseph Tussman, ed., *The Supreme Court on Church and State*, (New York: Oxford University Press, 1962), p. XV.

<sup>79</sup> Orren and Skowronek argue that states, representatives, executives, and judges are all “in charge” of determining the Constitution’s meaning, not solely the Supreme Court. Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 16.

<sup>80</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 23.

authority or in places where no rules have been yet laid down.”<sup>81</sup> It is not always wrenching, but it can be coopted and preempted. The Supreme Court’s authority thus stands as the defining interpretation of the U.S. Constitution’s First Amendment.

In each of the following landmark Supreme Court cases, one sees the concern for the appropriate *government* action in its relationship with religion. In cases involving the free exercise of religion, such as displaying a nativity scene in a public park, the evidence highlights the attention of the Court was focused upon what the government’s response should be, not on the role of the church. If the government favored one religious expression, other religions could be at risk for legal discrimination. However, the Court permitted religious displays if the nature of the display was set in a *historical* context, thus the Court continually acknowledged the inherent religious identity of the United States. That religious identity is a cornerstone in the crux of the nation’s history is especially true within its primary method of preservation: education. As explored further in chapter two, American colonists originally instilled the tenants of Christendom as the sole education for their children, including biblical illustrations in traditional primers for students to learn the alphabet. Even as late as 1953, the Committee on Religion and Education, meeting in Washington, D.C., voiced their opinion after analyzing the function of the public schools in dealing with religion:

All public schools...can provide for the factual study of religion both as an important factor in the historical and contemporary development of our culture and as a source of values and insight for great numbers of people in finding the

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<sup>81</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 23.

answers to persistent personal problems of living. Religion can, and in our judgment should, be studied in the same way as the economic and political institutions and principles of our country should be studied—not as something on which the American public school system must settle all arguments and say the last word, but as something which is so much a part of the American heritage and so relevant to contemporary values that it cannot be ignored.<sup>82</sup>

Indeed, the set of "Establishment" cases that recognized the right of parochial schools to exist instigated the litigation which continues today as a result to the changing interpretation of the wall of separation, "leading to the current three-pronged rule for distinguishing legal from illegal government 'support' of religion."<sup>83</sup>

These Supreme Court case studies underscore the fundamental truth that establishes the bedrock for the separation of church and state: the institutions must be kept separate, with government firmly kept in check; the religious values of the American citizenry must be protected and defended, and while government poses a threat to religious values if not strictly regulated, religious values do not. Nominated by President Roosevelt in 1914, Justice Robert Jackson, to whom the Supreme Court has consistently been responsive in their rulings, concluded in his majority opinion of *West Virginia v. Barnette*: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in...religion...or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an

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<sup>82</sup> Committee on Religion and Education, *The Function of the Public Schools in Dealing with Religion*, (Washington, D.C.: American Council on Education, 1953), p.7.

<sup>83</sup> Phillip E. Hammond, "The Shifting Meaning of a Wall of Separation: Some Notes on Church, State, and Conscience," *Sociological Analysis* 42, no. 3 (1981), p.230-231, doi:10.2307/3711034.

exception, they do not now occur to us.”<sup>84</sup> The “wall of separation” represents a paradox from which it can act either as a guarantor of religious freedom or a staunch barricade to government overreach:

Although it does not appear in the Constitution, discussion of establishment leans heavily on “a wall of separation between church and state.” This phrase of Jefferson was first quoted by the Court in the Mormon polygamy case. It reappeared in the *Everson* case (parochial school bus fares) and shortly the metaphor comes in for heavy treatment. Justice Black says the wall may not be breached; Justice Frankfurter admonishes that a wall is not a fine line easily overstepped; Justice Jackson fears that the wall may become as winding as Jefferson’s famous serpentine wall at the University of Virginia and later declares that it has become even more warped and twisted than he expected; and Justice Reed concludes that a rule of law should not be drawn from a figure of speech. That Justice Black upholds the use of public funds to reimburse parents sending children to parochial schools in the same opinion in which he resurrects the unbreachable wall of separation may come as a surprise.<sup>85</sup>

Justice Black’s application of the “wall” may come as a surprise to some, but only to those who do not fundamentally understand that the First Amendment firmly placed the onus upon government. The fight for the government to be placed within the confines of explicit law began in the formulation of the Constitution itself:

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<sup>84</sup> Robert S. Alley, ed., *The Constitution and Religion*, (New York: Prometheus Books, 1999), p. 15.

<sup>85</sup> Joseph Tussman, ed., *The Supreme Court on Church and State*, (New York: Oxford University Press, 1962), p. XV.

Interestingly...[in] Federalist ideas about governance, biblical citations...figure prominently in Anti-Federalist writings, in spite of the fact that anti-federalism was home to prominent deists of the day. Religious freedom and church/state separation were primary concerns of Anti-Federalists... Meanwhile, Federalists sought to downplay the institutional links between established religion and governance in order to distance themselves from monarchy in the wake of the Revolution, while still advocating for stronger central government. During the transition from the Articles of Confederation to the Constitution, Federalists sought to appease Anti-Federalist opposition to the Constitution by making provisions for individual rights. The first freedom granted in the Bill of Rights simultaneously permitted the free exercise of individual religion and prevented federal favoritism of specific religions.<sup>86</sup>

While the words on the First Amendment speak for themselves concerning the weighty responsibility placed upon the government, it was the background to the amendment that offers an even more telling description to the framer's preoccupation with the protection of religion from the government rather than the prohibition of religious influence:

The Anti-Federalists objected that the Constitution had no Bill of Rights, and some state ratifying conventions wanted an explicit statement guaranteeing religious freedom from the federal government... Virginia wanted an amendment prohibiting the federal government from infringing on the free exercise of religion

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<sup>86</sup> Joseph O. Baker and Buster G. Smith, *American Secularism: Cultural Contours of Nonreligious Belief Systems*, (New York: New York University Press, 2015), p.48.

according to the dictates of conscience and from favoring or establishing any particular sect.<sup>87</sup>

That demand subsequently became the First Amendment to the U.S. Constitution, but not without intense deliberation over the precise wording of the amendment. New York Congressman Sylvester feared the “tendency to abolish all religion” by the amendment, and Connecticut Congressman Huntington feared churches would be unable to collect payment of assessments due to the original broadly worded amendment.<sup>88</sup> After reviewing multiple versions and reassuring the many troubled Congressmen that religion would be free to flourish, the motion was passed, thus adding the First Amendment to the Constitution.

The perturbed Congressmen recognized a truth in danger of obscurity by the inadequate original wording of the First Amendment. That truth was that the First Amendment inherently recognized the church and state’s inability to exist in absolute isolation from one another. Instead, it circumscribed their relationship within the confines of appropriate behavior toward each other. A poignant reminder of that behavior in response to the First Amendment was offered by the opinion written for *Lynch v. Donnelly*:

The metaphor [a “wall” of separation] has served as a reminder that the Establishment Clause forbids an established church or anything approaching it.

But the metaphor itself is not a wholly accurate description of the practical

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<sup>87</sup> Richard J. Regan, *The American Constitution and Religion*, (Washington: Catholic University of America Press, 2013), accessed January 11, 2018. ProQuest Ebook Central, p. 33.

<sup>88</sup> Joseph Gales and William Winston Seaton, ed., *The Debates and Proceedings of the Congress of the United States* (Washington, D.C.: 1834), p. 729-31.



aspects of the relationship that in fact exists between church and state. No significant segment of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. “It has never been thought either possible or desirable to enforce a regime of total separation....” (*Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 760, 93 S.Ct. 2955, 2958, 37 L.Ed.2d 948 (1973)). Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.<sup>89</sup>

In the following Table 1, the analysis of the nature of the barrier between the separation of church and state is listed, categorized by three types of case: education, government benefits, and state and local religious practices. Two perspectives emerge when analyzing the education cases: 1) Allowing government to sanction religion or create laws favorable to a particular religion ensures religious liberty and expression to flourish (e.g. prayer/Bible reading by the teacher in public school) and 2) *Not* allowing the government to sanction religion or create laws favorable to a particular religion ensures religious liberty and expression to flourish (since other religions would then fall victim to discrimination). This thesis adopts the second perspective. Therefore, in court cases where the justices ruled against religious expression in the classroom by school employees or by the school itself, the cases are notated as having a “Benevolent Barrier” nature, since the court’s action prevented the government from making a law concerning religion. In *Santa Fe Independent School District v. Doe*, the students were the initiators

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<sup>89</sup> *Lynch v. Donnelly*, 465 U.S. 668, 673, 104 S. Ct. 1355, 1359, 79 L. Ed. 2d 604 (1984).

of the prayer, and not the teachers, therefore the ruling was not conducive to ensuring religious liberty and prohibited the student’s free exercise of religion, thus this case is notated as a having “Gatekeeper” nature. Detailed descriptions of each Supreme Court case were used as the basis for determining to which classification the case belonged (see Appendix).

**Table 1 The Nature of Landmark Supreme Court Cases**

<u><b>Court Case by Category</b></u>	<u><b>Nature of Case</b></u>	
<u><b>Education (19)</b></u>	<b>Benevolent Barrier</b>	<b>Gatekeeper</b>
<i>Minersville v. Gobitis</i> (1940)		√
<i>Everson v. Board of Education</i> (1947)		√
<i>Engel v. Vitale</i> (1962)	√	
<i>Abington School Dist. v. Schempp</i> (1963)	√	
<i>Epperson v. Arkansas</i> (1968)	√	
<i>Wisconsin v. Yoder</i> (1972)	√	
<i>Stone v. Graham</i> (1980)	√	
<i>Wallace v. Jaffree</i> (1985)	√	
<i>Edwards v. Aguillard</i> (1987)	√	
<i>Bd. of Educ. of Westside Comm. School v. Mergens</i> (1990)	√	
<i>Lee v. Weisman</i> (1992)	√	
<i>Zobrest v. Catalina Foothills School Dist.</i> (1993)	√	

<i>Kiryas Joel School Dist. v. Grumet</i> (1994)  <i>Santa Fe Indep. School Dist. v. Doe</i> (2000)  <i>Good News Club v. Milford Central School</i> (2001)  <i>Zelman v. Simmons-Harris</i> (2002)  <i>Elk Grove Unified School Dist. v. Newdow</i> (2004)  <i>Locke v. Davey</i> (2004)  <i>Christian Legal Society v. Martinez</i> (2010)	√     N   √	√  √  √  N  √  √
<p><b><u>Government Benefits (5)</u></b></p> <i>Sherbert v. Verner</i> (1963)  <i>Lemon v. Kurtzman</i> (1971)  <i>Mueller v. Allen</i> (1983)  <i>Employment Division v. Smith</i> (1990)  <i>Mitchell v. Helms</i> (2000)	√   √  	√  √  
<p><b><u>State/Local Religious Practices (17)</u></b></p> <i>Reynolds v. U.S.</i> (1879)  <i>Cantwell v. Connecticut</i> (1940)  <i>Braunfeld v. Brown</i> (1961)  <i>Torcaso v. Watkins</i> (1961)  <i>McDaniel v. Paty</i> (1978)  <i>Marsh v. Chambers</i> (1983)  <i>Lynch v. Donnelly</i> (1984)  <i>Thornton v. Caldor</i> (1985)	√  √  √  √  √  √  	√  √  

<i>Goldman v. Weinberger</i> (1986)		√
<i>Allegheny Cty. v. Pittsburgh ACLU</i> (1989)		√
<i>Church of the Lukumi Babalu Aye v. City of Hialeah</i> (1993)	√	
<i>Capitol Square Review &amp; Advisory Bd. v. Pinette</i> (1995)	√	
<i>Van Orden v. Perry</i> (2005)		√
<i>McCreary Cty. v. ACLU</i> (2005)	√	
<i>Cutter v. Wilkinson</i> (2005)	√	
<i>Gonzalez v. O Centro Espirita Ben. Uniao do Vegetal</i> (2006)	√	
<i>Hein v. Freedom from Religion Foundation</i> (2007)	√	N
	N	

N = neutral; the Court did not make a ruling concerning religion.

While some cases may facially appear as if the Court’s ruling aided religious liberty, such as in cases when the Court claimed the government action did not aid or single out religion (and thus making a law concerning the establishment of religion) because it was neutral—for example, *Everson v. Board of Education*, *Mitchell v. Helms*, *Locke v. Davey*, *Zelman v. Simmons-Harris*—the cases are marked with a “Gatekeeper” nature because of the indication that if the action *had* aided religion, it would have been struck down, thus it is an inverted ruling. *Van Orden v. Perry* and *McCreary Cty v. ACLU* represent particularly interesting cases studies because the logistics of the cases were identical, ruled within the same year, but concluded with opposite decisions. *Van Orden* allowed the Ten Commandments to be inscribed on a Texas State Capitol monument because of its historical significance—all three branches of government acknowledge the role of religion in American life, and although the commandments were religious, they also had an undeniable historical meaning. *McCreary* however, ruled the Ten

Commandments could not be displayed within two Kentucky courthouses because “the original display lacked any secular purpose because the Commandments are a distinctly religious document.”<sup>90</sup> In the example of these two cases, the Court wrestled between acknowledging the historical significance that religion plays in the identity of the country or ensuring religious liberty by not allowing the government to favor one particular religion and risk potential discrimination of other religions. More importantly, the Court’s dilemma reveals a consistent strand of truth: religion must be protected. The value placed upon religion in America, initially by the First Amendment and subsequently by the Supreme Court’s case rulings, is undeniable.

The Founders’ expectation that religion must be secured from the influence of government is evidenced with the number of the benevolent barrier court cases. Fig. 1 shows that collectively, the number of benevolent barrier cases totaled 23 (56%), the gatekeeper cases totaled 16 (39%), and the neutral cases totaled two (5%).

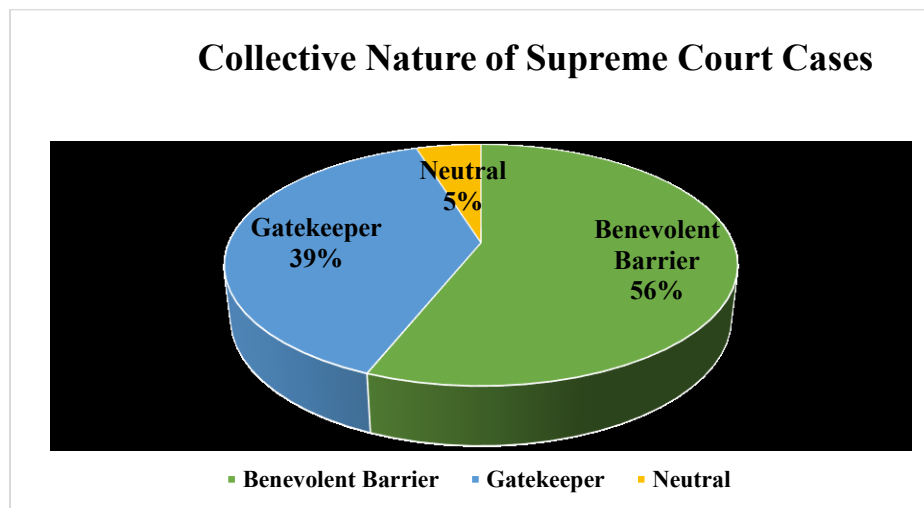


Fig. 1

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<sup>90</sup> *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005).

Fig. 2 illustrates the individual categories of court cases. Education cases totaled 11 benevolent barrier natures, seven gatekeeper natures, and one neutral case; the government benefits cases totaled two benevolent barrier natures, three gatekeeper natures, and no neutral cases; the state/local religious practices cases totaled 10 benevolent barrier natures, six gatekeeper natures, and one neutral case.

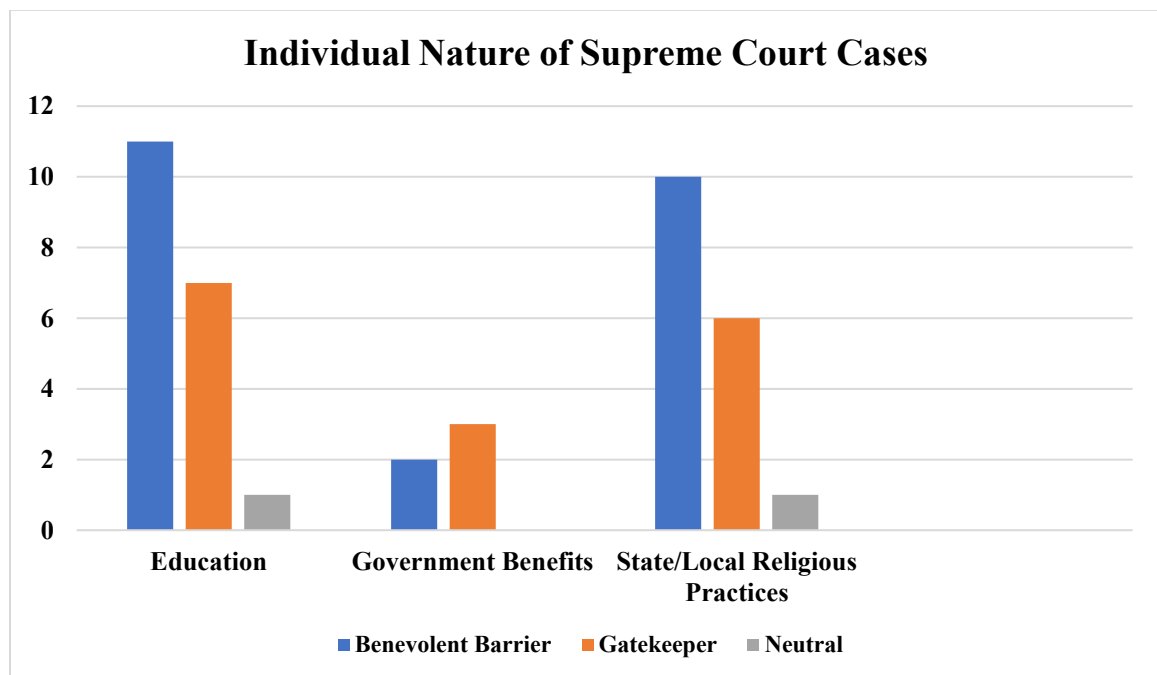


Fig. 2

The majority Supreme Court cases resulting in a benevolent barrier nature underscores the theme that the First Amendment originally established: preserve religious values. The evolution of the interpretation of the wall between the church and state has witnessed the growth of a new perspective, the guardian between two opposing spheres. However, the interpretation of the barrier between church and state being a gatekeeper

still trails behind the framer's benevolent barrier. The impact that the gatekeeper interpretation has had upon society has been the blurring of lines between the original purpose of the wall. What once was a respectful, mutually beneficial relationship has been obscured by changing attitudes toward religion, as chapter three describes.

The U.S. Constitution, through interpretation by the Supreme Court, has faithfully acted as an enforcer for religious freedom from the threat of government infringement. The analysis of over 40 Supreme Court cases emphasizes the intent of the First Amendment: protect religion from government. The demand and subsequent deliberation for an amendment for religious freedom to be included in the Constitution testifies to the nation's commitment to its religious founding, one which has continued to undulate throughout American history in the form of the separation of church and state policy. The historical appreciation for the role of religion in the American polity has been an informative guide for the decision-making process of Supreme Court justices. As Joseph Tussman stated:

We are, it is said, 'a religious people,' and however puzzling this phrase may be, it is pressed in the service of the view that it is altogether appropriate for our government to treat sympathetically the demands of religious life, to aid in furthering the spiritual development of the people—as it furthers material and intellectual development—provided that it does so with an even hand, without intrusion or control, and without coercion of non-believers.<sup>91</sup>

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<sup>91</sup> Joseph Tussman, ed., *The Supreme Court on Church and State*, (New York: Oxford University Press, 1962), p. XV.

Tussman's words highlight the crux for the aspiration of the First Amendment. The results of this chapter reveal the firm belief by the Framers of the Constitution that religious discourse and values should not be prohibited from the public square in the name of maintaining the separation between church and state has traditionally been reinforced by the Supreme Court. Jefferson's staunch commitment to protecting religion has remained steadfast for the past 200 years within the decisions made by the Court. Although the Court has remained loyal to the protection of religious liberty, a new interpretation for the separation has muddied the waters of America's religious ripple effect. Despite the presence of this new perspective, the interwoven relationship between religion and government in America is one that cannot be unknit, only tailored.



CHAPTER III

CULTURAL INFLUENCE IN CONTEMPORARY AMERICA

Like many struggles, the battles waged on the topic of separation of church and state were fought in people's minds and hearts as much as in the halls of the Supreme Court. While the common people's passions have always influenced the American pathway, their culture had a less than stagnant history. The tendrils of modernization—developments characteristic of the “present” time in each era—can most visibly be seen stretching into American culture through its music, film, and education. This chapter will first analyze the evolution of music over time and its movement away from religious influence and lyrics. Second, it will examine America's education system to discern religion's role in that arena. Third, it delves into the history of religious presence in film and the religious presence's gradual distancing from religion as well. Collectively, these three gauges of America's cultural temperature influence one of America's most defining concept that contribute to its traditional exceptionalism: the separation of church and state.

When arguing that contemporary America is influenced by its culture as a result to modernization, it is crucial to define the terms to establish context. The term “culture” in this paper is defined as a “particular form or stage of civilization, as that of a certain nation or period.”<sup>92</sup> American culture is a conglomeration of subsets. Additionally, this chapter analyzes culture as the *secular* “behaviors and beliefs characteristic of a particular social, ethnic, or age group”<sup>93</sup>: the youth culture, LGBTTTQA culture, feminist culture, elitist culture, etc., each built upon and defined by a fundamental set of unique values. In this context, this chapter addresses the secularization of American culture over

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<sup>92</sup> *Dictionary.com*, “Culture,” 2018, accessed September 26, 2017, <http://www.dictionary.com/browse/culture?s=t>.

<sup>93</sup> *Ibid.*

time, specifically between the 1950s and current era. Modernization is that which is near or characteristic of the *present* time as contrasted with any other time.<sup>94</sup> The chapter then proceeds to analyze whether modernization affects cultural groups as a product of societal changes by way of reaction and will examine one particular group: the Christian Right. Evidence shows modernization affected this cultural group's political engagement in that it increased when they felt their traditions threatened by changes to modern society. Lastly, this chapter will address what kind of impact the secularized culture has had upon the laws concerning the separation of church and state and analyze the paradoxical relationship between the law and culture: did the law change the culture or did the culture change the law? If the court system forced religion out of public schools, then that action influenced the culture, yet if the school system gradually evolved with the culture to no longer embrace or include religion in its curriculum, the demand for the removal of religion from the public school is indicative of secularization. The significance of this topic is paramount considering the holes in current research concerning the separation of church and state within the field of American Political Development (APD).

While there are many interpretations and perspectives on the separation of church and state, for purposes of this chapter, the separation of church and state is described in the previous chapter: the "church" does not refer to the whole body of Christian believers, but refers to the formal institution that affects political perceptions of citizens and constrains their actions over time. The institution of the church holds a religious purpose that determines its motive, establishes norms, assigns roles, and operates within

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<sup>94</sup> *Dictionary.com*, "Modern," 2018, accessed September 26, 2017, <http://www.dictionary.com/browse/modern?s=t>.

demarcated boundaries.<sup>95</sup> Likewise, the “state” refers to the physical institution of the central, civil U.S. government. Therefore, the separation of church and state refers to the codifying of the separation between the two institutions prescribed by the Constitution of the United States.<sup>96</sup> This definition of terms allowed the Constitution’s Framers to understand the crucial and distinct difference between the religious physical institution and the influence of values on government. As discussed in chapter one, this “separation” means the state cannot establish one faith as the official religion but in general terms can reference or depend upon religious values within its statecraft, and refutes the more liberal interpretation of the state excluding all religious imagery, practices, and language from any public sphere where it might imply religious endorsement. Scarce, if any, scholarship exists on the cultural impact that music, education, and film have had on the interpretation of America’s separation of church and state. This chapter sets out to address the noticeably absent research in APD on this topic.

## MODERNIZATION

Secular culture dominates the contemporary era because of political and economic modernization, which in turn creates splintering cultural groups as a result to tension and the need to protect distinct ideology, ultimately leading to cultural clashes in the public arena. Political scientist Ronald Inglehart summarized: “Modernization theorists...have argued that the world is changing in ways that erode traditional values. Economic

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<sup>95</sup> Karen Orren and Stephen Skowronek, “Institutions and Intercurrence: Theory Building in the Fullness of Time,” *Nomos*, Vol. 38, POLITICAL ORDER (1996), p. 82, accessed March 8, 2017, <http://www.jstor.org/stable/24219548>.

<sup>96</sup> In this paper, the separation of church and state refers to both the First Amendment and the 14<sup>th</sup> Amendment, which fully extended the First Amendment establishment clause to the state level.

development almost inevitably brings the decline of religion, parochialism, and cultural differences.” Additionally, cross-national studies reveal a negative relationship between religiosity and development.<sup>97</sup> The individual values held by American citizens remain the driving force for moving along each era in American history. James Hunter (1991) painted a picture of irreconcilable conflict over basic values and the inevitable “culture wars” that will arise.<sup>98</sup> While some scholars disputed Hunter’s culture wars metaphor,<sup>99</sup> evidence supports Hunter’s view of the character of religio-political conflict.<sup>100</sup> Just as Samuel Huntington theorized in *The Clash of Civilizations*—that there will be inevitable conflict between cultures in the post-Cold War world,<sup>101</sup>--so does Hunter postulate these cultural clashes, which arise as a result to modernization.

When modernization is introduced to any society, resistance is formed within the tenets of traditional society, forming a cultural defense movement to protect its traditional values, institutions, and beliefs.<sup>102</sup> Lynn Green et al. (1996) wrote: “Organized groups appear to defend old values, which may be embodied in time-honored institutions (or sometimes new ones), centered around religion, the family, or locality—all of which are perceived as under attack.”<sup>103</sup> Due to this era’s disparate value systems, more cultural groups have sprung up in modern times, thus more defense movements, and ultimately

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<sup>97</sup> Ronald Inglehart and Wayne E. Baker, "Modernization, Cultural Change, and the Persistence of Traditional Values," *American Sociological Review*, vol. 65, no.1, 2000, p. 81-82.

<sup>98</sup> Hunter, James Davison, *Culture Wars*, (New York: Basic Books, 1991).

<sup>99</sup> Horton, Michael, *Beyond Culture Wars*, (Chicago: Moody Press, 1994); Kellstedt, Lyman A., and John C. Green, “Knowing God’s Many People: Religious Denomination and Political Behavior,” (1993), in *Rediscovering the Impact of Religion on Political Behavior*, ed. David C. Leege and Lyman A. Kellstedt, (Armonk, N.Y.: Sharpe).

<sup>100</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front*, (Lanham, MD: Rowman & Littlefield, 1996), p. 2

<sup>101</sup> Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, (New York: Simon & Schuster, 1996).

<sup>102</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front*, (Lanham: Rowman and Littlefield, 1996), p. 8-9.

<sup>103</sup> Ibid.

the reason for culture dominating the American contemporary era, resulting in a cultural hodgepodge. A couple examples of those distinct cultural groups that developed primarily as a result to modernization are The Moral Majority and Christian Right groups.<sup>104</sup> These groups can become politically active, as the Christian Right has a record of doing. The Right's activism in congressional campaigns has been viewed by students of "politics of life-style concern" and "status politics" as an attempt by parochial populations to relieve anxieties as a result of social change and defend a status threatened.<sup>105</sup> Mark A. Knoll explained:

Religious organizations have always been enmeshed in American politics, from the days when colonial clergy blessed the American Revolution to the 1960s when Protestant, Catholic, and Jewish leaders fought for civil rights. Throughout most of American history, according to many historians, the interlocked dimensions of ethnicity and faith have been the main ingredients of party politics.<sup>106</sup>

Although Christians were not strangers to Caesar's lobbies, the advent of the Moral Majority in 1979 shocked pundits and scholars alike. Evangelical Protestants, historically apolitical, stepped into the political arena, but entered in a manner unlike other religious organizations; they were instead more reminiscent of secular interest

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<sup>104</sup> Ibid, p. 12-15.

<sup>105</sup> Seymour M. Lipset and Earl Rabb, *The Politics of Unreason*, 2d ed. (New York: Harper and Row, 1978); Kant Patel, Denny Pilant, and Gary L. Rose, "Christian Conservatism: A Study in Alienation and Life Style Concerns," *Journal of Political Science* (1985): 12:17-30.

<sup>106</sup> See Mark A. Noll, ed., *Religion and American Politics* (Oxford: Oxford University Press, 1990) for works including the influence of religion on American politics.

groups.”<sup>107</sup> Even after the Moral Majority disbanded, successors remained more sophisticated and larger.<sup>108</sup> John C. Green et al. (1996) studied Christian Right participation in House campaigns between 1978 and 1988. Their data were based upon internal documents from movement groups, collected in a comprehensive examination of materials that had been published, which ranged from sectarian groups to standard news sources. Additionally, this study compiled source material from 40 interviews conducted between 1987 and 1990 with knowledgeable journalists, officials of both major parties, and Christian Right activists. Campaigns were only included in the study if they had been identified by two or more sources.<sup>109</sup> They assigned all cases to three nominal categories: candidates receiving “local support” from Christian Right activists at the grassroots level, candidates who were “members” of the Christian Right, and candidates awarded “national support” from large-scale Christian entities but were not supported by local activists or tied to the movement directly. Table 2 tested the demand for the incidence of activism for all districts combined, and then for those with local support, member candidacies, and national support; it also tests the relative impact of the strategic choice factors and supply.<sup>110</sup>

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<sup>107</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front* (Lanham: Rowman and Littlefield, 1996), p. 62.

<sup>108</sup> James L. Guth, “The Politics of the Christian Right,” in *Interest Group Politics*, ed. Allan J. Cigler and Burdett A. Loomis (Washington, D.C.: CQ Press, 1983), p. 60-83; Matthew C. Moen, *The Transformation of the Christian Right* (Tuscaloosa: University of Alabama Press, 1992).

<sup>109</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front* (Lanham: Rowman and Littlefield, 1996), p. 106.

<sup>110</sup> *Ibid*, p. 109.

**Table 2**

**Christian Right (CR) Activism in Congressional Campaigns 1978-1988**

	Districts with CR Activism	Districts with CR Members	Districts with Local CR Support	Districts with Nat'l CR Support
<u>Demographic Factors</u>				
	-.01	-.02	-.00	-.03
% Blue Collar	-.04*	.05*	-.08*	-.09**
% Low Education	-.05**	.06*	-.07*	-.10**
% Low Income	-.19**	.06*	-.08*	-.10**
% Older	.02	.04	.02	-.01
% Rural	.02	.04	.02	-.00
% WASP Stock	.03**	.01*	.02**	.05*
% Population Change	.13**	.05**	.12**	.14**
% Suburban Region	.10**	.11**	.15**	.18**
<u>Religious Factors</u>				
Sectarian Protestants	.17**	.15**	.18**	.14**
% Members	.18**	.17*	.17**	.15*
# Churches				
Evangelical Protestants	.13*	.12*	.13**	.11*
% Members	.14*	.08*	.10**	.07*
# Churches	.15**	.01	.05*	.10**
% Unchurched				
<u>Political Factors</u>				



Margin of Victory:	-.21**	-.10**	-.13**	-.20**
General Election	-.05*	-.03*	-.06*	-.09*
Primary Election	.14*	.12*	-.07**	.17**
Open Seats	.10*	-.07*	-.06*	.09*
Viable Challengers	.05*	-.20	.01	.07**
Ideological Mismatch				
	410**	316*	351**	444**
Goodness of Fit				
% Predicted				
All Cases	78%	89%	87%	81%
CR Cases	67%	66%	69%	70%

#### Logistic Regression\*\*\*

\*Significant at .10 level; \*\*significant at .05 level; \*\*\*In each column, the dependent variable measures the incidence of Christian Right activism (CR activism = 1; no activism = 0). In the first column, the dependent variable includes all districts with Christian Right activism, followed by districts with only Christian Right Members, local support, and national support. For variable coding see note.<sup>111</sup>

Interestingly, the results revealed that lower-status or parochial populations were not usually associated with Christian Right activism. However, the evidence confirmed

<sup>111</sup> John C. Green et al., *Religion and the Culture Wars: Dispatches from the Front* (Lanham: Rowman and Littlefield, 1996), p. 109: "The variables in the logistic regression were coded as follows: the dependent variables were dichotomous (1 = Christian Right activism or particular type of activism; 0 = no Christian Right activism). Demographic and church membership variables were measured as a percentage of the population; the number of churches was used directly. Demographic variables were defined as: low income (0% less than \$15,000 annually), low education (% less than high school diploma), older (% 65 years of age or older), blue collar (% skilled and unskilled laborers), WASP stock (% British ancestry), and the percentage of rural and suburban population. Region was coded as an ordinal variable according to the degree of cultural conservatism (South = 4; Midwest = 3; West = 2; Northeast = 1) (Timothy D. Schlitz and R. Lee Rainey, "The Geographic Distribution of Elazar's Political Subcultures Among the Mass Population: A Research Note," *Western Political Quarterly*, 1978, 31: p.410-15). General election and primary margins were expressed as a percentage of the two-party vote and averaged over the period for each district. Open seats and viable challengers were measured by dummy variables. Ideological mismatch was calculated by subtracting the mean Christian Voice score from the mean vote for Reagan in 1980 and 1984."

one expected element: in culturally conservative areas undergoing rapid modernization, Christian Right activism arose, notably within the burgeoning Sun Belt suburbs. In this region, modernity clashed with tradition on even terms, fueled by the influx of cosmopolitans and upward mobility of traditionalists. These conditions produced discontented traditionalists who turned to political action as a remedy. A prime example is when Reverend Jerry Falwell, leader of the Moral Majority, “implored pastors to ‘urge people to vote, register them, tell them how to vote—right there in the pulpit.’” The Religious Roundtable, another prominent group led by evangelical clergy, invited thousands of ministers to gigantic rallies for Ronald Reagan, where they were given instruction in the fine art of electioneering.”<sup>112</sup> “Indeed, the real muscle of the Moral Majority, the Roundtable, and other Christian Right groups was provided by fundamentalist pastors.”<sup>113</sup> These details are telling, considering the historical barriers to political involvement by clergy members, and consequently, parishioners themselves: 1) Evangelicals traditionally put top priority on “soul winning” rather than the “things of this world,”<sup>114</sup> 2) Many evangelicals are pre-millennialists, emphasizing the inevitable societal decline and imminent Second Coming of Jesus, which discourage political engagement,<sup>115</sup> and 3) Pastors fear congregational discord or divisiveness as a result of political activity, or that political engagement will hamstring their acceptance in the larger community.<sup>116</sup> Ultimately, the results challenge the longstanding notion that

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<sup>112</sup> Ibid, p. 146.

<sup>113</sup> Robert Liebman and Robert Wuthnow, *The New Christian Right*, (New York: Aldine, 1983).

<sup>114</sup> Robert Zwier, *Born-Again Politics*, (Downers Grove, Ill.: Intervarsity Press, 1982); Ted G. Jelen, *The Political World of the Clergy*, (New York: Praeger, 1993).

<sup>115</sup> Clyde Wilcox, Sharon Linzey, and Ted G. Jelen, “Reluctant Warriors: Premillennialism and Politics in the Moral Majority,” *Journal for the Scientific Study of Religion* (1991): 30: 245-58.

<sup>116</sup> Jeffrey Hayes, “Pre-existing Social Networks and the Christian Right,” paper presented at the annual meeting of the Midwest Political Science Association, (Chicago, 1995).

evangelical clergy are an unlikely base for a conservative Christian political movement,<sup>117</sup> at least when a particular culture faces rapid modernization.

Profoundly influential German sociologist Max Weber recorded his observations on the American businessman when he noted the interesting habit of Americans to ask fellow coevals about their religious affiliation, even though the separation of church and state was well-established by that time (1904). Weber noted this custom acted as a sort of badge of trust between businessmen, and as the influence of religion declined, secular emulations of the practice supplanted religion's role (e.g. traveling salesmen wearing a lapel pin affiliated with their membership, without which they would be distrusted). Weber wrote: "Closer scrutiny revealed the steady progress of the characteristic process of 'secularization,' to which in modern times all phenomena that originated in religious conceptions succumb."<sup>118</sup> Weber claimed that even the most religious communities will succumb to secularization as a result to modernity. Additionally, democracies are known to be highly unstable; Americans spurn aristocratic traditions, class structure, and yokes of habits, however they rely heavily on religion and family to stabilize their government. Therefore, the secularization of American culture holds grave implications if its primary stabilizing apparatus is disassembled.

## SECULARIZATION

Joseph Baker and Buster Smith (2015)—researchers who studied the relationship between secularism and religion—classified contemporary secularities found in America

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<sup>117</sup> Laura R. Olson, "The Implications of Issue Definition among Protestant Clergy," (1992) presented at the Social Science History Association in Atlanta, GA.

<sup>118</sup> Max Weber, "The Protestant Sects and the Spirit of Capitalism," in *American Social and Political Thought: A Reader*, ed. Andreas Hess, (New York: New York University Press, 2003), p. 48.

as nonaffiliated belief, atheism, cultural religion, and agnosticism; additionally, they provided explanations for the increase in secularity over the past 40 years based upon empirical evidence.<sup>119</sup> Fig. 3 highlights the steady increase of Americans who claimed they were not religious or atheist beginning in the year 1981 to 2011.<sup>120</sup> What was only 8% in 1981 rose to 28% by the year 2011.

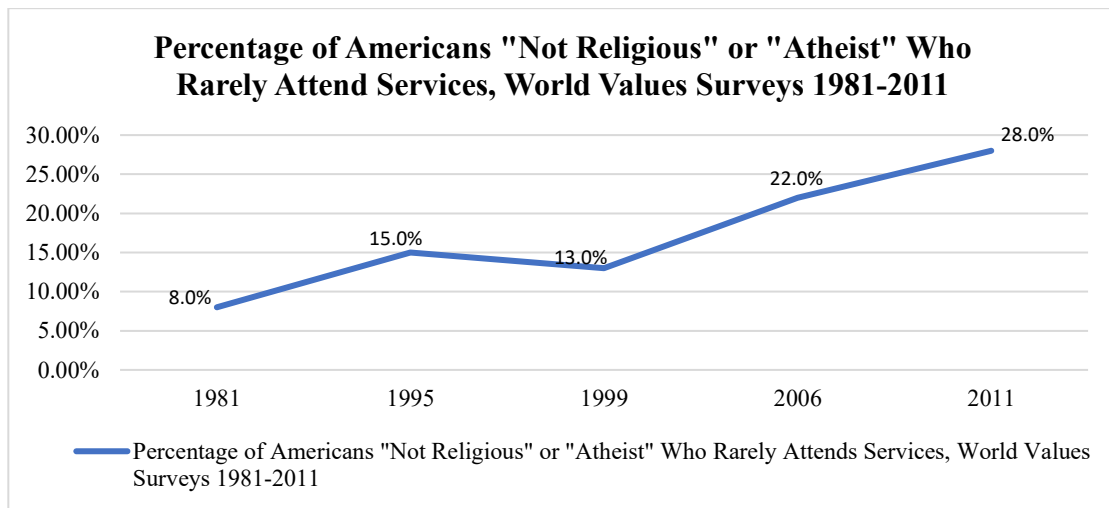


Fig. 3

Baker and Smith synthesized their findings:

The increase in Americans claiming no religion also reflects the growing presence of individuals who were raised outside of organized religions...Following the increase in religious “nones” that occurred among those who came of age during the 1960s, there has been an increase in the rate of those raised outside of religion among the cohort born between 1961 and 1980. Among those born between 1941 and 1950, fewer than 10% reported attending religious services twice a year or

<sup>119</sup> Joseph O. Baker and Buster G. Smith, *American Secularism: Cultural Contours of Nonreligious Belief Systems*, (New York: New York University Press, 2015), p.7.

<sup>120</sup> Ibid, p.3.

less as children. Among those born after 1970, that percentage more than doubled to 23%. Similarly, where only 2% of those born before 1911 never attended religious services as children, over 12% of those born since 1970 report never attending.<sup>121</sup>

The religious “nones” referenced by Baker and Smith can be analyzed even further back in history, beginning in 1928. Table 3 summarizes the decline in the largest religious groups in America: Protestantism and Catholicism, caused by generational replacement.<sup>122</sup> In addition to generational replacement, the Pew Research Center attributed the decline in religious affiliation to older populations disavowing their religious affiliation and switching religions.<sup>123</sup>

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<sup>121</sup> Joseph O. Baker and Buster G. Smith, *American Secularism: Cultural Contours of Nonreligious Belief Systems*, (New York: New York University Press, 2015), p.82.

<sup>122</sup> “America’s Changing Religious Landscape,” *Pew Research Center*, May 12, 2015, accessed December 1, 2017, <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>.

<sup>123</sup> Ibid.

Table 3

**Generational Replacement Helping Drive Growth of Unaffiliated, Decline of Mainline Protestantism and Catholicism**

	<b>Silent generation (born 1928-1945)</b>	<b>Baby Boomers (born 1946-1964)</b>	<b>Generation X (born 1965-1980)</b>	<b>Older Millennials (born 1981- 1989)</b>	<b>Younger Millennials (born 1990- 1996)</b>
	%	%	%	%	%
<b>Christian</b>	<b>85</b>	<b>78</b>	<b>70</b>	<b>57</b>	<b>56</b>
Protestant	57	52	45	38	36
<i>Evangelical</i>	30	28	25	22	19
<i>Mainline</i>	22	17	13	10	11
<i>Historically black</i>	5	7	7	6	6
Catholic	24	23	21	16	16
Other Christian groups	3	3	4	3	3
<b>Other faiths</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>8</b>	<b>8</b>
<b>Unaffiliated</b>	<b>11</b>	<b>17</b>	<b>23</b>	<b>34</b>	<b>36</b>
<b>Don't know/refused</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

2014 Religious Landscape Study, conducted June 4-Sept. 30, 2014. Figures may not add to 100%, and nested figures may not add to subtotals indicated, due to rounding.

The "other Christian groups" category includes Mormons, Orthodox Christians, Jehovah's Witnesses and a number of smaller Christian groups.

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Secularism in America did not suddenly “pop up” in modern history. Its presence philosophically hovered at the codifying of the separation of church and state, most notably in Thomas Jefferson’s dislike for the supernatural concepts in the Bible. It evolved in the “freethought” movement of Thomas Paine, traveled via Enlightenment missionaries (e.g. philosopher Elihu Palmer) in the early 19<sup>th</sup> century, dis-established official state religions in the 1820s and 30s, and developed in freethought newspapers, periodicals, and lectures by religious skeptics such as Abner Kneeland, Paine disciple Gilbert Vale, activist Frances Wright, and socialist Robert Owen; it assailed Protestantism’s reverence for natural science—based upon the belief that “Science shone a guiding light into the designs of God”—and even attacked God Himself in the evolutionary revolution led by Charles Darwin (however, Darwin himself had defenders among Christians; today, Christians hold varying beliefs toward evolution from “young-

earth creationism,”<sup>124</sup> which holds a literal Biblical account of creation a few thousand years ago to “theistic evolutionism,”<sup>125</sup> which holds that God used evolution to create man), and flourished under the purview of the “Great Agnostic” Robert Ingersoll and influential intellectuals such as suffragist Elizabeth Cady Stanton and Harvard professor Charles Eliot Norton.<sup>126</sup>

American secularism has undulated and even gone underground in times of severe anti-religious persecution: “The Bolshevik Revolution and the entry of the U.S. into World War I prompted the first Red Scare, and this political atmosphere not surprisingly coincided with the decline of freethought social movements, even as the ideas of such moments took greater hold in American culture and discourse,”<sup>127</sup> wrote Baker and Smith. The pitting of “godless communism” in the 1950s against an American religious national identity created a high watermark for religion in the United States. However, public participation in religion began to wane in the 1960s as a result to the influence of music, film, and education, which ultimately led to the sexual revolution.

In the past, the inability of secular groups to collectively agree on any given religion or set unanimous goals hindered the growth of secularism in the United States, especially when it faced competitive, organized religious groups.<sup>128</sup> The 1960s changed that when groups came together on more than one subject. One example is women’s increasing labor participation in the market and levels of education, thus feminism

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<sup>124</sup> For more on young-earth creationism, see Ken Ham, ed., *The New Answers Book 1*, (Green Forest, AR: Master Books, 2006).

<sup>125</sup> For more on theistic evolutionism, see Claude E. Stipe, “Scientific Creationism and Evangelical Christianity,” *American Anthropologist*, New Series (1985): 87, no. 1, p.148-50, accessed January 8, 2018, <http://www.jstor.org/stable/677678>.

<sup>126</sup> Joseph O. Baker and Buster G. Smith, *American Secularism: Cultural Contours of Nonreligious Belief Systems*, (New York: New York University Press, 2015), p.48-56.

<sup>127</sup> Ibid, p.59.

<sup>128</sup> Ibid, p.63.

movements that “challenged the social organization of sexuality, gender, and by implication, religion,”<sup>129</sup> with an exodus of women leaving the home and entering the workforce; this action challenged traditional feminine roles.

While there are many reasons for the sharp rise in American secularism—the changing demography patterns, the relationship between politics and religion, the decline in female domesticity and marriage rates coupled with growing levels of divorce, generational replacement, the shifting rates of secular and religious transmission from parents to children, the switching of religions,<sup>130</sup>—this chapter will focus on the effect that music, education, and film has had on American secularism and culture, and ultimately explain the effect upon the laws concerning separation of church and state.

## MUSIC

Kenneth Bielen (1999) analyzed the twentieth-century popular music history (both recordings and sheet music), focusing on bestsellers, to find out whether there was a noticeable change in the way Biblical images were expressed in popular music, and also whether there was a time when popular songs suggested an acceptance of the Biblical sacred order. Bielen asked: were there songs that “expressed the dismissal of the Biblical sacred order with clear, meaningful lyrics, present prior to the candid lyrics associated with the rock music of the late 1960s?”<sup>131</sup>

To answer his questions, Bielen undertook a broad survey from the first half of the century of recorded music, but focused more closely on the lyrics of songs between

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<sup>129</sup> Ibid, p.67.

<sup>130</sup> Ibid, p.69 and p.87.

<sup>131</sup> Kenneth C. Bielen, *The Lyrics of Civility: Biblical Images and Popular Music Lyrics in American Culture*, (New York and London: Garland Publishing, 1999), p. XII-XIV.



1955 to 1999. Bielen concentrated on contemporary pieces (songs that related to their time), but did not include theater and film soundtracks because “their appearance in media other than the radio adds a layer of exposure which may differentiate their popularity from that of songs only exposed via radio and the record market.”<sup>132</sup> Bielen omitted recordings associated with films or songs that related to other media because they could have changed the meanings for the listener. Bielen discovered that inoffensive and vague lyrics—what he called the “lyrics of civility”—alluding to Biblical imagery during the period between both World Wars continued in the first two decades of the twentieth century. Bielen described the lyrics of civility as an “ambiguous precept” with the following capacity:

An ambiguous precept can be re-defined by an individual so that it will have meaning for the person. By the act of remolding the precept, though, the individual is removing herself or himself from the order in which the precept originated. The analysis of lyrics unfolds the role of one component of popular culture, popular music, in transforming the religious element of a society.<sup>133</sup>

A great example of Bielen’s lyrics of civility was the 1950 song titled “Stars Are the Windows of Heaven” by the Ames Brothers. The song used a roundabout way of including God in its lyrics while simultaneously allowing the listener to insert his or her personal interpretation. The song displayed:

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<sup>132</sup> Ibid, p. XIV.

<sup>133</sup> Ibid, p.XIII.

...a clear use of the inoffensive language used to express Biblical images in American culture. Rather than the Father or the Son watching over God's children, or 'kids' in this case, it is celestial bodies that look over humanity and disapprove or affirm people's actions: 'They keep an eye on kids like me and you,' ...In addition to the language being inoffensive, the theological content is civil. There is no differentiation between correct and incorrect actions, but there is no statement as to the implications of moral trespass...The closest reference to a spiritual being in heaven is to angels: 'stars are the windows...where angels peak through.' In the teenage prayer songs which became popular later in the 1950s, stars and angels were frequently used as substitute images for God. So, in addition to the deity being identified through nondescript terms, there was a substitution of other heavenly beings for God in making references to the eternal character of the Biblical faith. Stars and angels provide less offensive references to the overwhelmingly other of the Christian sacred order.<sup>134</sup>

The popular songs during this period between world wars laid the groundwork for many of the genres that became the lyrics of civility in the 1950s and 1960s.<sup>135</sup>

Although additional music genres contained a plethora of faith-based lyrics (for example: the African-American recording artist, the country and western artist, and the Southern gospel artist), Bielen wrote that "...the mainstream audience responded to content-filled Biblical images emanating from the songs of the region as the voice of a marginalized distant group not relevant to the mainstream."<sup>136</sup> Additionally, "The

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<sup>134</sup>Ibid, p.19.

<sup>135</sup> Ibid, p.14.

<sup>136</sup> Ibid, p.34.

Biblical images in...song[s] are regionalized and, therefore, distanced from the ‘real world’ of the outside, surrounding mainstream culture.”<sup>137</sup> Therefore, these groups did not contribute to the secularization of American culture, nor are they included in the scope of research since they fall outside of the mainstream group. The use of sexuality in music and in music videos also contributed to the secularization of American culture as it challenged religious values. P. Cougar Hall et al. (2011)—researchers who studied the sexualization of popular music lyrics between the span of 1959 and 2000—discovered their findings supported many theories on human behavior, particularly Cultivation Theory:

Cultivation Theory addresses the impact that mass media themes have on communities and cultures (as cited in Glanz et al. 2008). Cultivation Theory specifically states that as individuals are increasingly exposed to a particular media message or perspective, the greater the likelihood this message or perspective will be adopted or accepted as reality (as cited in Gerbner et al. 1994). Cultivation Theory thus results in a “mediated reality” where that which is seen or heard most becomes that which is most believed.<sup>138</sup>

Bielen discovered that during the WWI period, songs “were founded in the pain of separation” from American troops and thus, several compositions included religious

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<sup>137</sup> Ibid, p.35.

<sup>138</sup> K. Glanz, B.K. Rimer, and K. Viswanath, *Health Behavior and Health Education: Theory, Research, and Practice*, 4<sup>th</sup> ed. (San Francisco: Jossey-Bass Publishers, 2008), and G. Gerbner, L. Gross, M. Morgan, & N. Signorielli, (1994); “Growing up with television: The cultivation perspective,” in J. B. D. Zillmann, ed., *Media effects: Advances in theory and research*, (Hillsdale, NJ: Lawrence Erlbaum Associates), p. 17-41, quoted in Cougar Hall, P., Joshua West, and Shane Hill, "Sexualization in Lyrics of Popular Music from 1959 to 2009: Implications for Sexuality Educators," *Sexuality & Culture* (2012): 16, no. 2: 103-117, *Academic Search Complete*, EBSCOhost, accessed December 2, 2017.

images; songs such as “God be With Our Boys” by John McCormack landed at number three on the bestseller chart in 1918, the Peerless Quartet’s song, “Say a Prayer for the Boys Out There” came in at number six of the same year, and both Charles Hart and Henry Burr’s recoding of “Just a Baby’s Prayer at Twilight (For Her Daddy Over There)” settled at number one and 10.<sup>139</sup> Bielen explained why religious songs during this era were ubiquitous: “The popularity of war-related songs with Biblical images during a time when there is a threat of impending war or during wartime itself is evidence of a ‘huddle’ that encompasses a populace unsure of its future. There is a turning to the Biblical sacred order to grasp a life-order that makes sense.”<sup>140</sup> Likewise, the insecurities brought on by the uncertainty of war burgeoned within the WWII era, with songs like “God Bless America” (number 10), “Praise the Lord and Pass the Ammunition!” and “Light a Candle in the Chapel” (number 21) each appealing to some higher power. Bielen described the influence that music had on the insecure society during that era:

In the wide swath of songs that contain religious and, in particular, Biblical images, it is easy to recognize and conclude that the Biblical foundations of American society permeate much of American popular music throughout the twentieth century. The lyrics of these songs are rooted, in part, in values gleaned from the Biblical underpinnings of the nation.” Lyrical images not only reflect the connection between American culture and the Biblical religion, but also act as shapers of culture. The words of popular songs have the power to influence the

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<sup>139</sup> Kenneth C. Bielen, *The Lyrics of Civility: Biblical Images and Popular Music Lyrics in American Culture*, (New York and London: Garland Publishing, 1999), p.4.

<sup>140</sup> Ibid, p. 6.

listener and...have a role in informing the religious decisions of the popular music audience.<sup>141</sup>

It is notable that while these songs offered comforting appeals to a higher power, they were vague in their lyrics and non-committal to a specific deity, leaving the song open for interpretation. That ambivalence, the “lyrics of civility,” unlocked the door to a secularized music environment.

There are two positions that propelled the secularization of music to where it stands today. First, the “lyrics of civility,” second, the increase in the profane: the Saturday night music rather than Sunday morning musical artistry. Bielen explained his meaning behind the lyrics of civility thusly:

In the universe of popular songs that express an adherence to the Biblical sacred order, most images are couched in an inoffensive and civil content-less language. The mainstream listener supplies her or his own meaning to the words. The term “Lord” (a conventional reference to God in popular music lyrics) is a connotation word. It lacks a clear interpretation or an absolute meaning. Thus, lyrics with vague references reduce the meaning of the Biblical sacred order because of their nebulous connotations...I [Bielen] label the inoffensive words of popular songs that embrace the Biblical tradition as lyrics of civility. It is most important to keep the idea of choice in mind in thinking about lyrics of civility. Civil or inoffensive lyrics afford the opportunity of meaning choice by the listener. A choice can be made by the receptor as to the meaning of the words sung. Civil lyrics connote

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<sup>141</sup> Ibid, p. X.

rather than denote. Connotation words are invested with whatever meaning the listener desires, whether or not it agrees with the meaning originally invested in them by the lyricist. The flexibility of meaning inherent in civil lyrics renders them contentless.<sup>142</sup>

The lyrics of civility “have the form of the Biblical faith, but do not have the substance.”<sup>143</sup> Bielen wrote that “this vagueness is the key to the discussion of God in American culture. Song lyrics present a key to understanding the dynamic of how the dilution of the meaning of a sacred order, through the use of vague terms, creates an environment in which adherents turn to other possibilities for meaning.”<sup>144</sup> Ultimately, Bielen summarized the relationship that the lyrics of civility have between the secular and sacred when reviewing American culture. He wrote, “The emergence of lyrics of civility is related to the dichotomy between the sacred and the secular in mainstream American culture...In the mainstream market...the...mingling of the spiritual and the natural did not fit with the mainstream construction of reality.”<sup>145</sup>

Songs that included religiously ambivalent lyrics in the post WWII epoch steadily transitioned from “contentless” and inoffensive to a direct departure from religion in the wake of the absence of war. Beginning in the 1950s, the substitution of romantic interest replaced God as the center of an individual’s sacred order. In Nat King Cole’s 1952 song “Faith Can Move Mountains,” “the romantic interest becomes the overwhelmingly other”<sup>146</sup> and borrows from the Book of Matthew, which states: “...If you have faith like

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<sup>142</sup>Ibid, p. XI.

<sup>143</sup> Ibid, p.22.

<sup>144</sup> Ibid, p. XII.

<sup>145</sup> Ibid, p. XIII.

<sup>146</sup> Ibid, p. 76.

a grain of mustard seed, you will say to this mountain, ‘Move from here to there,’ and it will move, and nothing will be impossible for you.”<sup>147</sup> Likewise, the singer substituted God for his love interest instead; she is his source of strength and his help with lyrics like “What couldn’t I do when I know that you are here to help me along,” and “Kiss me and I’ll be strong.”<sup>148</sup> Additional songs like Jimmie Rodger’s 1958 song titled “Make Me a Miracle” and Simon and Garfunkel’s 1966 song titled “Kathy’s Song” contributed to the centering of romantic love in the place of God. In “Make Me a Miracle,” Rogers sings, “I’m only a cup, make me a chalice,” which has strong religious connotation, and “Kathy’s Song” asserts that human love is higher than the divine with the line, “I stand alone without beliefs, the only truth I know is you.”<sup>149</sup> “Lightning Strikes” (1966) by Lou Christie encouraged the consummation of a relationship before marriage, Paul McCartney’s song “Eleanor Rigby” espoused “no one was saved,” in its lyrics, suggesting there is no salvation or redemption, “California Dreamin’” by the Mamas and the Papas dismissed Biblical tradition with its illustration of pretending to pray, Jim Morrison’s title cut from his fourth album *The Soft Parade* (1969) shouts, “You cannot petition the Lord with prayer,” John Lennon defined God as a concept of the human imagination in his 1970 song titled “God,” and his indelible recording of the 1971 hit “Imagine” petitions the listener to “Imagine there’s no heaven...no hell below us, above us only sky.”<sup>150</sup> With each new title release, God no longer held sway in the hearts of Americans.

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<sup>147</sup> Matt. 17:20.

<sup>148</sup> Ibid, p. 76.

<sup>149</sup> Ibid, p. 76-77.

<sup>150</sup> Ibid, p. 78-90.

## EDUCATION

The course of American education has evolved from now an unrecognizable, faith-based curriculum to an entirely secular one over its history. Originally, American colonial founders instilled into their children the tenants of Christendom as their sole education for society to not only continue, but flourish. Barbara Lacey (2007) offered a glimpse into the way of life when she wrote: “The main purpose of their education was to teach children the doctrines and moral precepts of Protestant Christianity so they would be prepared for conversion.”<sup>151</sup> Additionally, “The young took the first steps toward literacy by hearing the Bible read aloud, memorizing the catechism, and by examining the illustrated, versified alphabet available in the primer.”<sup>152</sup>

The most popular publication during the colonial period, *The New England Primer*, which sold three hundred million copies between 1680 and 1830, drew upon Biblical illustrations to aid the student’s understanding of the alphabet.<sup>153</sup> Figure 4 illustrates the alphabetical letters from the *Primer*, with each letter representing an emblem. “Each set of words, image, and a letter fulfills...an emblem...For example, ‘A’ is the title; the couplet, ‘In Adam’s Fall / We sinned all,’ is the motto; and the woodcut of a man, a tree, and a serpent is the visual image. However, to understand the full meaning of the emblem, one must turn to the biblical description of creation (Gen. 1:26-27, ch.3).”<sup>154</sup>

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<sup>151</sup> Barbara E. Lacey, *From Sacred to Secular*, (Massachusetts: Rosemont Publishing & Printing, 2007), p. 40.

<sup>152</sup> Barbara E. Lacey, *From Sacred to Secular*, (Massachusetts: Rosemont Publishing & Printing, 2007), p. 40.

<sup>153</sup> Ibid, p. 42.

<sup>154</sup> Ibid, p. 43-44.



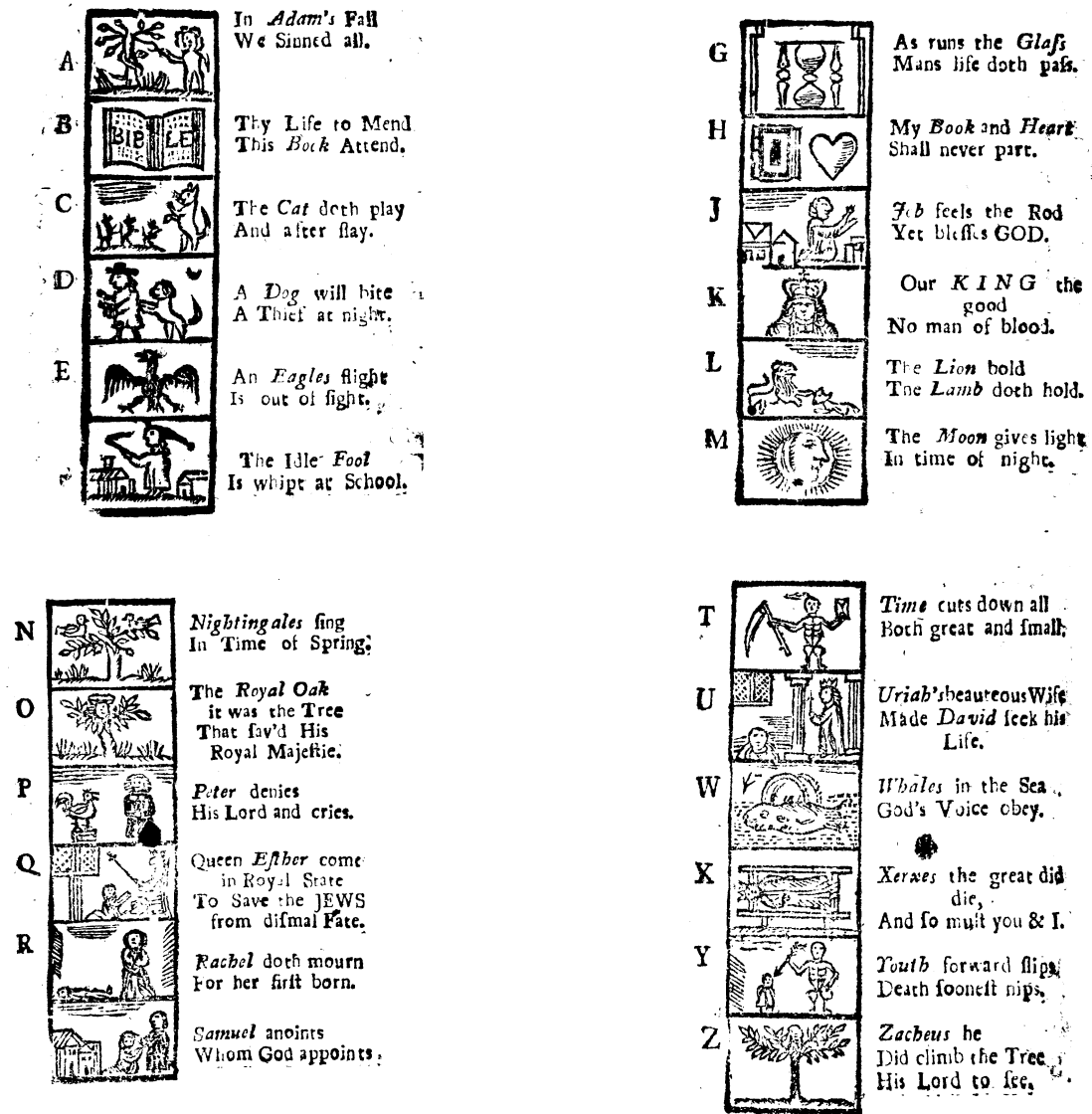


Fig. 4. "A to F," "G to M," "N to S," "T to Z," Alphabet blocks, *The New England Primer* (Boston, 1727).<sup>155</sup>

The *New England Primer* remained popular for so long not only because it upheld the Puritan mores, but also because it was compatible with John Locke's perspective on education, and by default, enlightened Lockean principles.<sup>156</sup>

<sup>155</sup> Cotton, John, *The New-England Primer Enlarged: For the More Easy Attaining the True Reading of English: To Which Is Added, Milk for Babes*, (Boston: Printed by S. Kneeland & T. Green, 1727). The Johns Hopkins Sheridan Libraries, Evans Digital Edition.

<sup>156</sup> Barbara E. Lacey, *From Sacred to Secular*, (Massachusetts: Rosemont Publishing & Printing, 2007), p. 47.

In John Locke's *Some Thoughts on Education*, he addressed what he believed the proper pursuit of education: "The Lord's Prayer, the Creeds, and Ten Commandments, 'tis necessary he should learn perfectly by heart; but, I think, not by reading them himself in his primer, but by somebody's repeating them to him, even before he can read."<sup>157</sup> Although Locke was not an advocate for children reading the Bible because it was bound to cause confusion on topics of which they "understand nothing," he did encourage the reading of certain parts of Scripture:

...There are some parts of the Scripture which may be proper to be put into the hands of a child to engage him to read; such as are the story of Joseph and his brethren, of David and Goliath, of David and Jonathan, etc. and others that he should be made to read for his instruction, as that, What you would have others do unto you, do you the same unto them; and such other easy and plain moral rules, which being fitly chosen, might often be made use of, both for reading and instruction together; and so often read till they are thoroughly fixed in the memory; and then afterwards, as he grows ripe for them, may in their turns on fit occasions be inculcated as the standing and sacred rules of his life and actions.<sup>158</sup>

Lacey highlighted just how important biblical literacy was to education as a whole during colonial times: "While later alphabet books would present the text, 'A is for Apple,' and focus on yet another aspect of the Adam story, for eighteenth-century readers of the primer, both human history and the alphabet began simply with Adam and his

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<sup>157</sup> John Locke, *Some Thoughts Concerning Education*, (NuVision Publications, 2007), p. 124.

<sup>158</sup> John Locke, *Some Thoughts Concerning Education*, (NuVision Publications, 2007), p. 125.

sin.”<sup>159</sup> The *New England Primer* was eventually supplanted in the 19<sup>th</sup> century by Noah Webster’s *Blue-Backed Speller* to accommodate non-Protestant immigrants; thus, “the teaching of religion was separated from the teaching of literacy.”<sup>160</sup> This step of removing religion from the public school arena began the steady decline of religious presence in the classroom.

Secularization in education steadily increased over the years but picked up speed around the mid-20<sup>th</sup> century, measured by the number of Supreme Court cases concerning the separation of church and state in the public school system. While the significance of court cases addressing the separation of church and state as it pertains to the public education arena is more thoroughly addressed in the previous chapter, we can see the movement toward secularization in public schools through key cases worth mentioning here because the Court’s decisions concerning education policy act as the demarcation for this era influenced by contemporary culture. The secularization of education distinguishes itself among the continuum of music and film by the manner with which it was disseminated, shifting from religious and home-based means over time to a more secularized, government-funded and led administration. Because the government took a more active role in education, ensuing Supreme Court cases ultimately represented the demarcation for this era.

The secularization of public schools went into full force with the Supreme Court’s 1947 decision involving state aid to religious schools and introduced the terminology Thomas Jefferson used in his letter to the Danbury Baptists, a wall of separation between

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<sup>159</sup> Barbara E. Lacey, *From Sacred to Secular*, (Massachusetts: Rosemont Publishing & Printing, 2007), p. 44.

<sup>160</sup> Barbara E. Lacey, *From Sacred to Secular*, (Massachusetts: Rosemont Publishing & Printing, 2007), p. 50.

church and state.<sup>161</sup> Since that time, the majority of cases involving education include claims made under the Establishment clause. However, there have been lawsuits accusing neutral government policies of curtailing the Free Exercise Clause by placing burdens on the exercise of religious beliefs but not holding an overriding justification. For example, the Supreme Court ruled in *Wisconsin v. Yoder* that Amish students could not be put under compulsory education after the 8<sup>th</sup> grade because the parents of those students had a fundamental right to practice their freedom of religion; the court recognized the parent's right outweighed the state's interest to educate the children.<sup>162</sup> In the early 1960s, two Supreme Court cases became landmark legislation concerning Bible reading and prayer in public schools: *School District of Abington Township v. Schempp* and *Engel v. Vitale*.<sup>163</sup> The Supreme Court ruled that activities such as Bible reading daily prayer could not be sponsored by the public school system regardless of the student's voluntary participation because the action was a violation of the Establishment Clause. The 1971 Supreme Court case *Lemon v. Kurtzman* established what would become known as the "Lemon test," a stringent method for determining the constitutionality of the government's ruling on religion.<sup>164</sup> The *Lemon* test was threefold and asked whether the government possessed the following:

1. Did it have a secular purpose?
2. Did it impede or advance religion?
3. Did it avoid excessive government entanglement with religion?

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<sup>161</sup> *Everson v. Bd. Of Educ.*, 330 U.S. 1, 15-15 (1947).

<sup>162</sup> 406 U.S. 205 (1972).

<sup>163</sup> *Sch. Dist. Of Abington Twp. V. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

<sup>164</sup> *Lemon v. Kurtzman*, 404 U.S. 602 (1971).

These three questions collectively informed the Supreme Court's decision-making process for over 20 years, striking down school-sponsored religious activities such as having clergy members deliver graduation prayers, posting the Ten Commandments in classrooms, and holding student elections to vote for student-led prayers at sporting events.<sup>165</sup> The judiciary established that public educators may not wear proselytizing clothes, distribute or display religious materials, lead prayer sessions, disregard curriculum components because of religious objection, or use references to religion when instructing students.<sup>166</sup> In short, personal sectarian beliefs are not allowed to be imposed upon young, vulnerable students.

The removal of religion from public school systems has not been without controversy, and many people, parents and administrators alike, do not know where to place themselves amidst the law. The Washington D.C. Committee on Religion and Education expressed in its (1953) report on *The Function of the Public Schools in Dealing with Religion* what they believed happened when religion was stripped from the public schools:

Silence creates the impression in the minds of the young that religion is unimportant and has nothing to contribute to the solution of the perennial and ultimate problems of human life. This negative consequence is all the more striking in a period when society is asking the public school to assume more and

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<sup>165</sup> *Stone v. Graham*, 449 U.S. 39 (1980) (posting ten commandments in public schools); *Lee v. Weisman*, 505 U.S. 577 (1992) (clergy-led graduation prayers); *Santa Fe Indep. Sch. Dist. V. Doe*, 530 U.S. 290 (2000) (student-led prayers at public school sporting events).

<sup>166</sup> *Palmer v. Bd. Of Educ. Servs.*, 603 F.2d 1271 (7<sup>th</sup> Cir. 1979); *Roberts v. Madigan*, 921 F.2d 1047 (10<sup>th</sup> Cir. 1990); *Marchi v. Bd. Of Coop. Educ. Servs.*, 173 F.3d 469 (2d Cir. 1999); *Downing v. W. Haven Bd. Of Educ.*, 162 F. Supp. 2d 19 (D. Conn. 2001); *Borden v. E. Brunswick Sch. Dist.*, 523 F.3d 153 (3d Cir. 2008).

more responsibility for dealing with the cultural problems of growth and development.<sup>167</sup>

Although the Supreme Court's decisions on education notably impacted policy, which in turn had some impact upon the culture, it was the influence of culture upon the Court that facilitated the change. Therefore, the question can be asked: did a secularized culture change social policy or did the changes in social policy secularize the culture? This author is not convinced it is either one or the other, but rather both operate as a paradox, i.e. the influence is exerted in both directions. Secularized culture exerted pressure on social policy, but that social policy, with its strong commitment to the community's norms and mores, including their gradual secularization, exerted a countervailing pressure against the culture. Ultimately, the relationship is symbiotic, not causal.

## **FILM**

Author Tim Stanley (2014) discussed the motion picture industry and its censorship, notably the actions taken by the Production Code Administration (PCA), in his article "Speaking in Code." Stanley addressed the controversy concerning film censorship that starred actresses such as Jane Russell, as well as the PCA impact on movies. He examined the relationship between free enterprise and Judeo-Christian ethics and also discussed William H. Hays—president of the Motion Pictures Producer and Distributors Association (MPPDA)—and what became known as the "Hays Code." The

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<sup>167</sup> Committee on Religion and Education, *The Function of the Public Schools in Dealing with Religion*, (Washington, D.C.: American Council on Education, 1953), p. 6.

Hays Code “urged the promotion of wholesome, American values that would improve the morals of the audience.”<sup>168</sup> The Code was created in response to uncensored, scantily-clad actresses such as Jane Russell, Barbara Stanwyck and Joan Blondell, and a fear of federal government regulation cracking down on loose moral standards in film production.<sup>169</sup>

The first official “Don’ts and Be Carefuls”<sup>170</sup> list created by the MPPDA laid the foundation for cleaning up Hollywood’s motion pictures. Preferable to federal censorship, “the Code staffers would now be film critics of a sort, evaluating movies not on the basis of thou-shalt-not commandments but by a set of inchoate aesthetic criteria.”<sup>171</sup> The list included 10 items to never be included in films and 25 items to be approached with conservative caution:

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<sup>168</sup> Tim Stanley, "Speaking in Code," *History Today* (October 2014): 64, no. 10, *Historical Abstracts*, EBSCOhost, accessed October 31, 2017, p. 21.

<sup>169</sup> Tim Stanley, "Speaking in Code," *History Today* (October 2014): 64, no. 10, *Historical Abstracts*, EBSCOhost accessed October 31, 2017, p. 21.

<sup>170</sup> “The Don’ts and Be Carefuls,” (1927), accessed October 31, 2017, <http://www.wabashcenter.wabash.edu/syllabi/w/weisenfeld/rel160/donts.html>

<sup>171</sup> Thomas Doherty, "SEX, VIOLENCE, AND ADULT THEMES: The MPAA and the Birth of the Film Ratings System," (2017), *Cineaste* 42, no. 4: 10-15. *Art Full Text* (H.W. Wilson), EBSCOhost, accessed October 31, 2017, p. 13.

**Motion Picture Producers and Distributors of America, "The Don'ts and Be Carefuls" (1927)**

*Resolved, That those things which are included in the following list shall not appear in pictures produced by the members of this Association, irrespective of the manner in which they are treated:*

1. Pointed profanity-by either title or lip-this includes the words "God," "Lord," "Jesus," "Christ" (unless they be used reverently in connection with proper religious ceremonies), "hell," "damn," "Gawd," and every other profane and vulgar expression however it may be spelled;
2. Any licentious or suggestive nudity-in fact or in silhouette; and any lecherous or licentious notice thereof by other characters in the picture;
3. The illegal traffic in drugs;
4. Any inference of sex perversion;
5. White slavery;
6. Miscegenation (sex relationships between the white and black races);<sup>172</sup>
7. Sex hygiene and venereal diseases;
8. Scenes of actual childbirth-in fact or in silhouette;
9. Children's sex organs;
10. Ridicule of the clergy;
11. Willful offense to any nation, race or creed;

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<sup>172</sup> While the Hays Code included many constraints with which traditional Christians might agree, the list was also a reflection of social life at the time and included other prohibitions most modern-day individuals consider racist.



*And be it further resolved, That special care be exercised in the manner in which the following subjects are treated, to the end that vulgarity and suggestiveness may be eliminated and that good taste may be emphasized:*

- 1.** The use of the flag;
- 2.** International relations (avoiding picturizing in an unfavorable light another country's religion, history, institutions, prominent people, and citizenry);
- 3.** Arson;
- 4.** The use of firearms;
- 5.** Theft, robbery, safe-cracking, and dynamiting of trains, mines, buildings, etc. (having in mind the effect which a too-detailed description of these may have upon the moron);
- 6.** Brutality and possible gruesomeness;
- 7.** Technique of committing murder by whatever method;
- 8.** Methods of smuggling;
- 9.** Third-degree methods;
- 10.** Actual hangings or electrocutions as legal punishment for crime;
- 11.** Sympathy for criminals;
- 12.** Attitude toward public characters and institutions;
- 13.** Sedition;
- 14.** Apparent cruelty to children and animals;
- 15.** Branding of people or animals;
- 16.** The sale of women, or of a woman selling her virtue;
- 17.** Rape or attempted rape;
- 18.** First-night scenes;

19. Man and woman in bed together;
20. Deliberate seduction of girls;
21. The institution of marriage;
22. Surgical operations;
23. The use of drugs;
24. Titles or scenes having to do with law enforcement or law-enforcing officers;
25. Excessive or lustful kissing, particularly when one character or the other is a "heavy."

The Hays code governed Hollywood for more than a quarter of a century. However, the tone of the Court changed the Code precedent with the seminal case *Joseph Burstyn, Inc. v. Wilson* in 1952. Burstyn claimed his controversial film, *The Miracle*—a film portraying a young peasant girl who believes she encounters St. Joseph, who persuades her to drink some wine; she does and falls asleep only to subsequently discover she is pregnant out of wedlock—had a right to be shown in the United States as any censorship would violate the First and Fourth Amendments. The Supreme Court ruled in favor of Burstyn because “to censor a film on a charge of sacrilege would be tantamount to leaving every film open to censorship.”<sup>173</sup> The Court concluded, “After all, there are thousands of religious sects and cults in the United States and some film is bound to offend someone somewhere.”<sup>174</sup> The following year the court ruled censorship of films in general was unconstitutional, thus the door to directing freedom opened.

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<sup>173</sup> Aubrey Malone, *Censoring Hollywood: Sex and Violence in Film and on the Cutting Room Floor*, (North Carolina: McFarland and Company, 2011), p. 79.

<sup>174</sup> Kardish, *Reel Plastic Magic*, p. 202, cited in Aubrey Malone, *Censoring Hollywood: Sex and Violence in Film and on the Cutting Room Floor*, (North Carolina: McFarland and Company, 2011), p. 79.

Directors did not hesitate to seize the opening of this Pandora's Box in their pursuit of lucrative entertainment. *A Streetcar Named Desire* (1951) had already pushed the boundaries before the Burstyn ruling, with a range of themes including infidelity, insanity, homosexuality, and rape. The same year the Supreme Court abolished film censorship (1953), the voyeuristic magazine *Playboy* was founded by Hugh Hefner, ushering in a time for clean-cut bachelors to embrace guilt-free, casual sex. The face of the era was Marilyn Monroe, who posed for *Playboy* that same year and transformed societal mores:

The incandescent Monroe didn't exude the aura of *femme fatale*. Hers was a new kind of sexuality, a more user-friendly type. As Norman Mailer proclaimed, sex was like ice cream to her; she was Everyman's love affair with America. This was a different kind of bugbear for puritans because this lady brought sex away from the *film noir* boudoir and into the cotton candy living-room. She made it all look like fun, like children playing with sandcastles on the beach. How could anybody censor this?<sup>175</sup>

The era of sexuality in films had arrived. Films like *From Here to Eternity* (1953) normalized counter-cultural expectations at the time, including Deborah Kerr and Burt Lancaster kissing on a beach in their bathing suits, even though Kerr's character was married to another man. Kerr reprised her promiscuous role in *Tea and Sympathy* (1956), where she plays a married woman who seduces an 18-year-old student to have sex with

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<sup>175</sup> Aubrey Malone, *Censoring Hollywood: Sex and Violence in Film and on the Cutting Room Floor*, (North Carolina: McFarland and Company, 2011), p. 89.

her “so that he’ll know he’s a man.”<sup>176</sup> Not to be one-upped, Bridget Bardot exploded on the scene in the mid-1950s with movies like *Love is My Profession* (1959), where she lifts up her skirt to repay her attorney for defending her in court against a charge of theft.<sup>177</sup>

The 1960s grabbed the torch of sexualization and lit up the screens in 1961 with *Never on Sunday*, a film about a hooker celebrating the joys of prostitution. Perhaps even more revealing about the change in societal norms was the Oscar-winning movie *The Apartment*. The film centered around Jack Lemmon, who loans his apartment out to his boss as a bordello for convenient sexual trysts. With illicit sex, infidelity, and adultery at the center of the story, the movie went on to win a surprising five Academy Awards. Similarly, Elizabeth Taylor won an Oscar for her portrayal of a prostitute in *Butterfield 8* (1960).<sup>178</sup> The tone of the era was accurately captured by Murray Shumach when he said, “What was violent controversy in the days of Clara Bow became innocent merriment with Monroe.”<sup>179</sup> In today’s era, pre-marital sex and nudity have not only become common-place, but expected.

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<sup>176</sup> Aubrey Malone, *Censoring Hollywood: Sex and Violence in Film and on the Cutting Room Floor*, (North Carolina: McFarland and Company, 2011), p. 98.

<sup>177</sup> Ibid, p. 105.

<sup>178</sup> Ibid, p. 119.

<sup>179</sup> Murray Schumach, *The Face on the Cutting Room Floor*, p. 159, as cited in Aubrey Malone, *Censoring Hollywood: Sex and Violence in Film and on the Cutting Room Floor*, (North Carolina: McFarland and Company, 2011), p. 120.

## EFFECTS OF MUSIC, FILM, AND EDUCATION (CULTURE) ON THE SEPARATION OF CHURCH AND STATE

Music, education, and film each contributed to the secularization of American culture in their own unique but significant way. This cultural trivium essentially removed the sacred from everyday life and supplanted it with the secular, but how exactly does that impact the nation's law, its policies, court system, or constitution? Specifically, how does the secular culture affect the separation of church and state? Nikolai Wenzel's (2017) description of constitutional culture captures the importance of the general makeup of what comprises the category:

...Constitutional culture captures an attitude about constitutional constraints and constitutionalism. Constitutional culture includes the implicit and explicit, stated and unstated, conscious and subconscious, thoughts, feelings, beliefs, impressions and norms a group holds about the nature, scope and function of constitutional constraints...Thus, constitutional culture reflects the most basic beliefs and attitudes about general organization, that is, not just the constitutional text itself, but the entire network of attitudes, norms, behaviors and expectations among elites and publics that surround and support the written instrument.<sup>180</sup>

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<sup>180</sup> Nikolai Wenzel, "Constitutional Culture, Constitutional Parchment and Constitutional Stickiness: Matching the Formal and the Informal," *Journal Jurisprudence* 31 (2017), *Academic Search Complete*, EBSCOhost, accessed November 1, 2017, p. 58-59.

Wenzel views a constitution as a coordinating mechanism among the "interests that matter" within a polity, rather than a contract. It is the "informal constraints" of the people that legitimize the constitution. He writes:

There can be no outside appeal to any other formal institution beyond the constitution; hence the importance of informal constraints in maintaining constitutional order. Hardin (1988) explains that "without support from relevant people, perhaps often in the grudging form of those unable to coordinate in refusing support...rules would not be worth the paper on which they are recorded." Similarly, Alexander Hamilton noted of the US Constitution that it would be a "frail and worthless fabric" in the hands of the wrong people. Informal constraints thus hold a central importance for constitutionalism. If a critical mass of individuals refuses to be bound, if it rejects constitutionalism generally or the constitution specifically, if it does not accept the deferral of current power for long-run stability, the entire constitutional undertaking will fail. Expediency will trump principle. Power will prevail over rules. And short-term gain will win over long-term coordination. In the words of Franklin and Baun (1995, vii), "in the constitutional state the rule of law prevails, not because the courts or police say it should, but because there exists a general acceptance of and confidence in the law."<sup>181</sup>

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<sup>181</sup> Nikolai Wenzel, "Constitutional Culture, Constitutional Parchment and Constitutional Stickiness: Matching the Formal and the Informal," *Journal Jurisprudence* 31 (2017), *Academic Search Complete*, EBSCOhost, accessed November 1, 2017, p. 57-58.

Although the “thoughts, feelings, beliefs, impressions and norms” of the citizens are what directly influence a particular national constitution, it is *Congress* who make the laws in America, and the Supreme Court that interprets them, not the people. Alexander Hamilton argued in *The Federalist No. 78* that the people are too far removed from the Supreme Court to threaten the its judgments or have much of an impact. The separation of powers keeps the whims of the people from ruling each fickle generation. Therefore, what does the people’s opinion matter? Hamilton addresses this as well when he claims that the *people* were the ultimate source of sovereignty:

...The power of the people is superior to both [the judicial and the legislative]; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.”<sup>182</sup>

Therefore, Congress cannot override the opinions of the people because the people are the superior law, the ones who give Congress the power to pass any law at all.

Additionally, it is the people’s opinion that comprises civilization itself. During a speech in 1938, at the height of the Sudetenland crisis, Winston Churchill—Prime Minister of Great Britain from 1940-1945—described the concept of civilization to the University of Bristol:

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<sup>182</sup> Alexander Hamilton, *The Federalist No. 78: The Judiciary Department*, (1788), *Constitution Society*, accessed November 1, 2017, <http://www.constitution.org/fed/federa78.htm>.

There are few words which are used more loosely than the word “Civilization.” What does it mean? It means a society based upon the opinion of civilians. It means that violence, the rule of warriors and despotic chiefs, the conditions of camps and warfare, of riot and tyranny, give place to parliaments where laws are made, and independent courts of justice in which over long periods those laws are maintained. That is Civilization—and in its soil grow continually freedom, comfort and culture.<sup>183</sup>

Essentially, civilization is civilian rule. Therefore, as Nikolai Wenzel wrote:

If a constitution does not match the underlying culture, the constitution will be rejected. Likewise, if a country is culturally fragmented among types, and if the constitution favors the vision of one type to the exclusion of others, the document will be rejected by the other types who may then attempt to seize power through extra constitutional means.<sup>184</sup>

As the secularization of America’s culture progressed, mainstream America grew to disfavor religious influence on society, notably in its music, film, and education system. Fig. 5 summarizes public opinion on prayer in public schools and reveals that support for prayer in public schools has consistently declined while opposition toward prayer in public schools has increased at the same rate.<sup>185</sup>

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<sup>183</sup> Winston S. Churchill, *Blood, Sweat, and Tears*, Randolph S. Churchill, ed. (New York: G. P. Putnam’s Sons, 1941), p. 45–46.

<sup>184</sup> Nikolai Wenzel, "Constitutional Culture, Constitutional Parchment and Constitutional Stickiness: Matching the Formal and the Informal," *Journal Jurisprudence* 31 (2017), *Academic Search Complete*, EBSCOhost, accessed November 1, 2017, p. 64.

<sup>185</sup> Rebecca Riffkin, “In U.S., Support for Daily Prayer in Schools Dips Slightly,” *Gallup News*, (September 25, 2014), accessed December 7, 2017, <http://news.gallup.com/poll/177401/support-daily-prayer-schools-dips-slightly.aspx>.



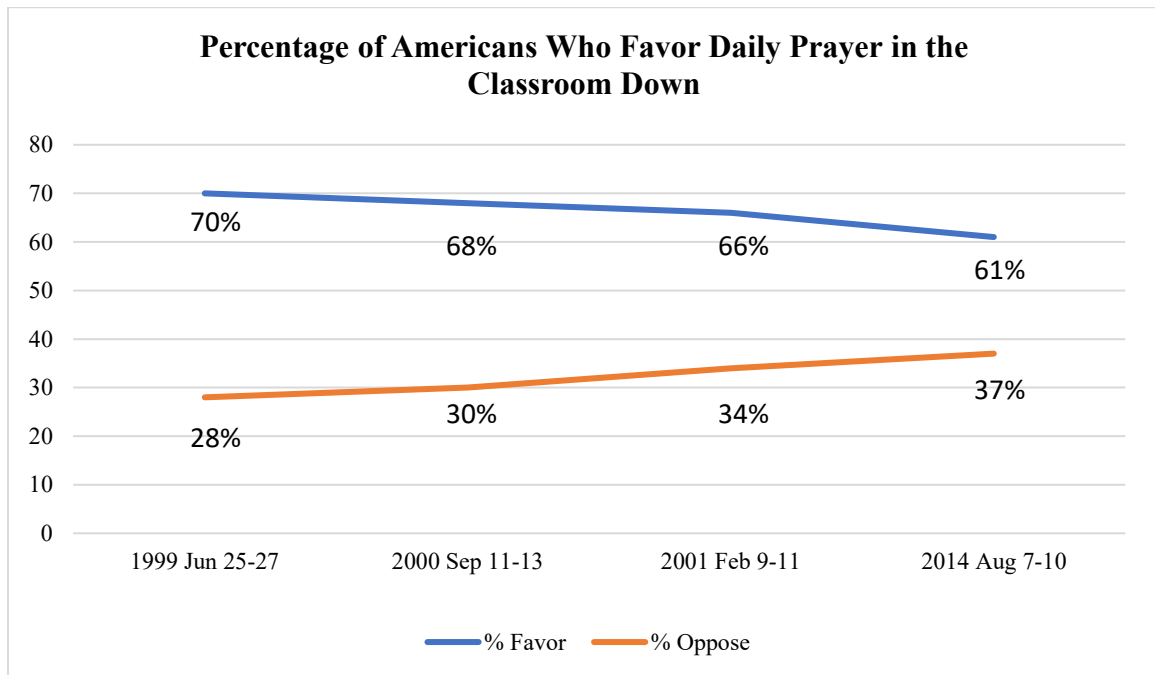


Fig. 5. Gallup Poll based on telephone interviews conducted Aug. 7-10, 2014, with a random sample of 1,032 adults, aged 18 and older, living in all 50 U.S. states and the District of Columbia.

Phillip Hammond (1981) addressed the change in America's perspective toward religion concerning the separation of church and state, writing: "When [genuine confusion over the 'no establishment' clause] did become apparent [well into the 20<sup>th</sup> Century]...it forced recognition that everyone does not regard all religion as a good thing, does not believe civil instruction requires spiritual instruction, or that church-sponsored schools deserve government help."<sup>186</sup> As a result of the change in culture, the once-held position that the separation of church and state was a barrier installed to protect religious liberty, evolved into the gatekeeper interpretation. Hammond elaborated:

<sup>186</sup> Hammond, Phillip E. "The Shifting Meaning of a Wall of Separation: Some Notes on Church, State, and Conscience," *Sociological Analysis* (1981): 42, no. 3, p.230, doi:10.2307/3711034.

When Justice Hugo Black thus wrote (in *Everson v. Board of Education* 330 U.S. 15 [1947]) that government cannot “pass laws which aid one religion, aid all religions, or prefer one religion over another,” he was—in all but the final phrase—violating the taken-for-granted world of the 18th Century Framers and ratifiers. Their assumptions could not be his; Americans now disagreed that religion is good; indeed...they even came to disagree on what religion is. The result was a First Amendment understanding quite at odds with a notion of a wall to insure religious liberty. Instead, the metaphor conveyed a barrier image; it was a keeper-of-peace between factions inclined to entangle, a guardian of separate institutional spheres.<sup>187</sup>

There are many Supreme Court cases that attest to the evolving public attitudes toward the separation of church and state, as noted in Chapter 2. The Court ruled in *Lee v. Weisman*<sup>188</sup> that prayers at public school graduation ceremonies may not be led by clergy members, causing students to take creative measures under their “private” right to practice their faith. *West Virginia State Board of Education v. Barnette*<sup>189</sup> held that students are protected by the First Amendment when choosing not to recite the Pledge of Allegiance, which contain the words “under God,” and numerous cases have been brought before the Court disputing whether it is even constitutional to recite the Pledge since it includes the religious phrase, including *Myers v. Loudoun*<sup>190</sup> and *Sherman v. Community Consolidated School District 21*.<sup>191</sup> What was once viewed as a crucial

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<sup>187</sup> Ibid, p. 231.

<sup>188</sup> *Lee v. Weisman*, 505 U.S. 577 (1992).

<sup>189</sup> *W. VA. State Bd. Of Educ. V. Barnette*, 319 U.S. 624 (1943).

<sup>190</sup> *Myers v. Loudoun County Sch. Bd.*, 251 F. Supp. 2d 1262 (E.D. Va. 2003).

<sup>191</sup> *Sherman v. Cmty. Consol. Sch. Dist. 21*, 980 F.2d 437 (7<sup>th</sup> Cir. 1992).

bulwark against the infringement of religious freedom has now transformed into a full-armed guard dispatched in the effort to settle endless disputes and intervene to address the perceived threat of religious influence on government, a concept the Founders would find preposterous (as addressed in chapter one).

While the first epoch of America's political development of the separation of church and state was defined by its Puritan roots (the "Church"), the subsequent era experienced a different construction than its religious-driven founding. The economic and political modernization experienced by the nation has elicited engagement by various cultural groups (e.g. the Christian Right) as a result to their perceived threat of the group's traditional beliefs. The effects of secularization upon three primary gauges of the nation's culture—music, education, and film—have stimulated a shift in values and thus, a movement away from religion in each arena. This change in culture has been the catalyst for the growth of a new interpretation of one of America's oldest structures, the separation of church and state. No longer is the separation solely a bulwark for religious liberty; today's growing interpretation consists of a governmental referee appeasing two squabbling siblings, adjudicating individual spheres at odds with one another rather than the original purpose of aligning the separation in such a way to buttress one another's strength.

## *Conclusion*

Chapter 1 provided in-depth analysis of the original intent for the role of religion in the interaction between church and state through examination of the words of the Founders themselves, which gave poignant insight into the value system upon which they built their system of government. The Founders' writings reveal a common theme, beginning with Thomas Jefferson's letter to the Danbury Baptists and his "Virginia Bill for Establishing Religious Freedom," then his second inaugural speech of 1805 and multiple personal correspondences between Benjamin Rush (1803), Miles King (1814), Charles Thomson Monticello (1816), and William Short (1819); continuing with the Declaration of Independence—written by Jefferson—with an example of the state's common practice during the era before the implementation of the 14<sup>th</sup> Amendment, *The People v. Ruggles*; continuing with James Madison's "Memorial and Remonstrance against Religious Assessments" and *The Federalist No. 51*, Alexander Hamilton's *The Stand I*, George Washington's 1789 "Thanksgiving Proclamation," 1796 Farewell Address, Thomas Paine's *The Age of Reason*, and concluding with President Lincoln's second inaugural address. Each document testifies that the Founders did not believe there was threat of religious values influencing those acting within the public or official arena. As Robert Bellah noted:

The separation of church and state has not denied the political realm a religious dimension...there are common elements of religious orientation that...have played a crucial role in the development of American institutions and still provide

a religious dimension for the whole fabric of American life, including the political sphere.<sup>192</sup>

Instead, these men whose scale of impact upon the nation's founding cannot be downplayed, encouraged the influence of religious values since those values acted as a moral compass for every man, as well as a useful support for public virtue. Because of this analysis, one can see the Founders' actual intent and meaning for religion's role with respect to political proceedings in the civic sphere. Their intent was not to ban religious discourse and values from the public square in the name of maintaining the separation of church and state because doing so would fundamentally misinterpret the separation between the two *institutions*. They understood the difference between the physical religious institution and the influence of values upon elected and appointed officials, and that separating the two institutions did not preclude religious-based values from influencing public decisions.

Because the First Amendment was an uncompromising demand made by the Anti-Federalists to be met under conditions of constitutional ratification, the influence of religion has had a lasting and cumulative effect on the development of American politics, as Chapter 2 showed. The Supreme Court helped produce a government fiercely loyal to the protection of religious liberty and regulation of government's role regarding religion in America. The Court's decision-making endures within state and federal laws that protect the American polity and safeguards future posterity, evidenced by the number of benevolent barrier cases. If the Court had interpreted the First Amendment differently, or

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<sup>192</sup> Robert N. Bellah, "Civil Religion in America," *Dædalus, Journal of the American Academy of Arts and Sciences*, Winter 1967, Vol. 96, No. 1, p. 121.

if the original wording of the amendment itself failed to adequately secure religious freedom, or if it had never passed, the national government could have seized upon the vulnerability of American citizens. If the national government exercised this undisputed legal authority from the beginning of the founding, the nation's most intense conflicts of policy—including civil rights and slavery—would have changed its course indefinitely. However, the interpretation of the wall has begun to change with the influence of the gatekeeper nature, which has obscured the Founders' original purpose for the separation of the church and the state. The political synergy between the Supreme Court and issues on the separation of church and state have been necessary for the development of thought concerning religious freedom.

As Chapter 3 showed, American attitudes toward religion have shifted since the founding era. As a result to political and economic modernization, traditional values eroded and the nation witnessed the decline of religious participation overall, which encouraged a climate conducive to splintering cultural groups within America, notably the Christian Right and the Moral Majority. These groups formed a cultural defense movement to protect their threatened system of traditional values and beliefs. The shift in American values over time contributed to the steady increase of secularization.

Americans who claimed they were not religious or atheist were documented by the Pew Research Center, which found that those who claimed to be a Christian in 1928 totaled 85%, but by 1996 that number had dropped to 56%.<sup>193</sup> Additionally, Baker and Smith tracked the increase in secularization between the years 1981 to 2011, noting that the

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<sup>193</sup> "America's Changing Religious Landscape," Pew Research Center, May 12, 2015, accessed December 1, 2017, <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>.

level of secularization in 1981 totaled only 8%, but by the year 2011 had risen to 28%.<sup>194</sup>

With the advent of modernization and the increase of secularization came changes to the American cultural landscape and its relationship with religion—notably in music, education, and film. The moving away from religion and its accompanying mores in music, film, and education has in turn driven a disagreement on the role of religion in American culture today, and has ultimately acted as a catalyst for the new interpretation for the wall of separation between the church and state: the gatekeeper role.

This thesis discovered a pattern of robust religious protection throughout the influential periods of the church, the Constitution, and the culture vis-à-vis the policy on the separation of church and state, with each era featuring the protection of religious values playing themselves out in public life. This is important because “the use of comparison and pattern identification emphasizes essential aspect of politics and political change neglected elsewhere.”<sup>195</sup> The pattern of religious appreciation and protection testifies to the religious identity deeply instilled in the nation at its Founding moment and remained consistent across periods of time when different elements such as the Cs held pre-eminence in society. As secularization increased over time, the pattern seemingly fell away. However, as Karen Orren and Stephen Skowronek wrote:

...Patterns of interest often range across broad swaths of time. These might be patterns of the present that extend all the way back to the origins of the Republic and before—like religious awakening—or patterns of the past, which, thought

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<sup>194</sup> Joseph O. Baker and Buster G. Smith, *American Secularism: Cultural Contours of Nonreligious Belief Systems*, (New York: New York University Press, 2015), p.3.

<sup>195</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 9.

seeming to fall away, leave traces that affect the operation of the new ones set in motion-like royal prerogative.<sup>196</sup>

While a new interpretation for the separation of church and state emerged, the original interpretation for a wall to ensure religious liberty still takes precedent, thus the pattern reemerges and will continue to do so as a result to the religious nature of the America's founding.

The phenomenon of the separation of church and state ensures the American religious pattern will continue, however the increased secularization in America represents what Orren and Skowronek call a "breakpoint" in time: "Other changes, related to patterns, are imprinting events, breakpoints in time, that alter aspects of politics decisively from before and with far-reaching consequences for operations elsewhere later down the road."<sup>197</sup> That breakpoint disrupted the religious pattern already at play in America and skewed the effects of past actions in the founding era, e.g. the interpretation of the First Amendment. Did this breakpoint cause a new pattern to begin, or was it a mere iteration, or perhaps disruption, within the continuity of American religious identity? While the passage of time can further inform and conclusively define the gatekeeper interpretation, it can also obscure it; however, the new nature of the wall undoubtedly finds its origin in the nation's religious origin...the unmooring of American culture from its religious roots owes the very act to the anchor itself.

The potential gravity of this reality's implications can be viewed through several lenses: if the nation attempts to unmoor itself from its religious identity, or deny it in the

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<sup>196</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 9.

<sup>197</sup> Ibid, p. 10.



first place, what does that mean for civil society, the intersection between the church and state? And what of civic education? American citizens must learn a value system...but from where if not their own American identity? Additionally, democracies are known to be highly unstable: Americans spurn aristocratic traditions, class structure, and yokes of habits, but they rely heavily on religion and family to stabilize their government as the building blocks of society. The disassembly of family and religious values holds sobering implications if its primary stabilizing apparatus, constructed upon a religious identity, is secularized. A more sedulous look at the implications of increased secularization paints a somewhat optimistic picture but also one that quietly, albeit overlooked, acknowledges an important point: the religious foundation for the country acted as a forerunner to its future, but perhaps not necessarily one that will continue. In other words, the mooring sustained the nation during its construction, but upon completion, the vessel embarked upon uncharted territory without its religious identity as a framework to interpret new experiences. Even so, as de Tocqueville insightfully observed, the nation's founding will continue to influence and shape the nation's posterity as they navigate seemingly new waters.

If America relies on its religious identity time and again throughout history, and consistently defends it in the Court, then does the secularization of American culture threaten that identity? Ironically, the secularization of American culture is indispensable for the success of subsequent policy on the protection of religious values. With the trend of religious affiliation declining, the potential exists for the coterie of religious groups to become the minority bloc in America, thus the Supreme Court would in turn interpret the First Amendment to protect them more diligently. The Bill of Rights safeguards the

citizenry against the tendency towards tyranny by the majority, recognizing the danger that de Tocqueville addressed: “If it be admitted that a man possessing absolute power may misuse that power by wronging his adversaries, why should not a majority be liable to the same reproach?”<sup>198</sup> Securing the rights of the minority has always been a matter of future self-preservation since the political pendulum may swing unexpectedly, thus rendering the previous majority a new minority. The formation of new minority blocs in America is evidenced in the landmark case, *Burwell v. Hobby Lobby* (2014),<sup>199</sup> and underscores why this thesis is important: it is ongoing, with real-time issues that will continue to inform and shape church-and-state policy far into the future as APD posits.

The separation of church and state, then, represents a paradox. The relationship between political order and political change projects itself within the policy as “observations about tensions [are] routinely introduced by the simultaneous operation, or intercurrency, of different political order,”<sup>200</sup> evidenced in the coexistence of a very religious America with a government based on separating the institutions of church and state to secure liberty for all. Edmund Burke’s observations on religion’s indispensable role resonate more than 240 years after he wrote them:

Religion, always a principle of energy, in this new people [colonial Americans] is no way worn out or impaired; and their mode of professing it is also one main cause of this free spirit. The people are Protestants; and of that kind which is the

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<sup>198</sup> Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve, esq., ed. Francis Brown, (New York: Barnes & Noble, 2003) p. 234.

<sup>199</sup> *Burwell v. Hobby Lobby*, 573 U.S. \_\_ (2014) ruled in favor of David and Barbara Green, Hobby Lobby co-founders; the Court protected the Green’s claim to religious freedom when declining health coverage in the form of life-terminating drugs and devices for its employees.

<sup>200</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 17.

most adverse to all implicit submission of mind and opinion. This is a persuasion not only favourable [*sic*] to liberty, but built upon it.<sup>201</sup>

Because APD is an interpretive enterprise “engaged in a conversation about the past and future prospects of the American polity,”<sup>202</sup> it is a way to dovetail empirical research with the interpretive issue for church and state separation, which this thesis has done. What the separation of the church institution from the state institution teaches us about past and present politics is that they connect by a bridge of consistent policy concerning the interpretation of the wall; the relationship persists throughout eras wherein different social forces—the church, the Constitution, and the culture—rose to dominance in society. This in turn informs us “...how time comes to exert an independent influence on political change, apart from the notion that time ‘passes’...these things illuminate the nature of American politics, including whether, and in what sense, it may be said to ‘develop.’”<sup>203</sup> Therefore, rather than a community bounded in time, this APD research indicates political movement *through* time and underscores the relation *between* past and present politics, instead of the isolated and distant politics of the past.<sup>204</sup> Comprehensively, it is in the juxtaposition and sequence of religious pattern that American politics may be appreciated as *shaped* by time.<sup>205</sup> Although scrutinizing how American politics have changed within the separation of church and state informs the distinguishing marks of APD research, additional areas for research in this field remain.

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<sup>201</sup> Edmund Burke, *Speech on Conciliation with the Colonies* (Chicago: The University of Chicago Press, 2000). <http://press-pubs.uchicago.edu/founders/documents/v1ch1s2.html>

<sup>202</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 27.

<sup>203</sup> Karen Orren and Stephen Skowronek, *The Search for American Political Development*, (United Kingdom: Cambridge University Press, 2004), p. 9.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid, p. 12.

How will the new interpretation for the wall of separation change future policy? Will the benevolent barrier continue as precedent or be overtaken by the new nature of the separation? Has the secularization of American culture created an irreversible pattern for the separation of church and state, or does the contemporary polity desire reversal? Future scholarship should devote attention to these questions to expand the field of APD. Seymour Martin Lipset wrote about the United States of America: "It is the most religious country in Christendom, the only one still strongly influenced by the moralistic and individualistic ethos of Protestant sectarianism."<sup>206</sup> Despite secularization's rise, the development of American politics undoubtedly owes a considerable debt to the influence of religion, as do future APD scholars to the study of it.

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<sup>206</sup> Lipset, Seymour Martin, "Still the Exceptional Nation?" *Wilson Quarterly* (2000): 24, no. 1: 31. *MasterFILE Premier*, EBSCOhost, accessed February 10, 2018.

## APPENDIX

### Landmark Supreme Court Cases on the Separation of the Church and State That Include a Government Onus

#### ***1. Reynolds v. United States (1879)***

The Court upheld a federal law banning polygamy; the Free Exercise Clause forbids the government to regulate belief, however it does allow the government to regulate actions such as marriage. The Court permitted the government to convict George Reynolds of bigamy charges because his claim to religious duty did not fall under the Free Exercise Clause since it was an action and not opinion. While Reynolds was free to be a Mormon, he was not free to practice any religious activity he pleased, becoming “a law unto himself.”<sup>207</sup>

#### ***2. Minersville v. Gobitis (1940)***

The Court upheld the Minersville Public School District for its expulsion of Lillian and William Gobitis as consequence for failing to salute the American flag during the recitation of the Pledge of Allegiance. The Gobitis children claimed their religious faith forbade the worship of idols, of which they considered the flag to be. To promote national cohesion, for “National unity is the basis for national security,” the Court permitted the school district’s decision.<sup>208</sup> However, three years later the Court reversed its decision in *West Virginia v. Barnette* (1943).

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<sup>207</sup> *Reynolds v. U.S.*, 98 US 145 (1878).

<sup>208</sup> *Minersville School District v. Gobitis*, 310 US 586 (1940).

### **3. *Cantwell v. Connecticut* (1940)**

The Court ruled the First Amendment's Free Exercise Clause applied to the state level in addition to the federal level via the Fourteenth Amendment. The Court reigned in the state of Connecticut when it concluded it could not mandate a special certificate for religious solicitation when certificates were not obligated for non-religious entities practicing solicitation.<sup>209</sup>

### **4. *Everson v. Board of Education* (1947)**

The Court upheld the state of New Jersey's decision to reimburse parents of private and parochial school students for their expense of busing their children to school; the financial assistance was not given to the church but went to the child.<sup>210</sup> This was the first case to apply the Establishment Clause to the state government's actions, therefore reigning in the government's actions toward state citizens.

### **5. *Braunfeld v. Brown* (1961)**

The Court upheld a Pennsylvania law requiring the closure of all stores on Sundays. Because their religion required them to close stores on Saturdays as well, Orthodox Jews claimed the law unduly burdened them. The Court permitted the law because it did not specifically target Jews but rather "...the purpose and effect...is to advance the State's secular goals."<sup>211</sup>

### **6. *Torcaso v. Watkins* (1961)**

The Court denied the state of Maryland the right to require a religious test, specifically

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<sup>209</sup> *Cantwell v. State of Connecticut*, 310 US 296 (1940).

<sup>210</sup> *Everson v. Board of Education of Ewing*, 330 US 1 (1947).

<sup>211</sup> *Braunfeld v. Brown*, 366 US 599 (1961).

attesting to his/her belief in God, for candidates of public office.<sup>212</sup> The Court reigned in the government by ruling its requirement violated Article VI of the Constitution as well as the First and Fourteenth Amendments.

### **7. *Engel v. Vitale* (1962)**

The Court reigned in the government by ruling it unconstitutional for the state of New York to compose an official school prayer to begin the school day.<sup>213</sup> The government may not direct prayer in public schools as it is a violation of the Establishment Clause.

### **8. *Sherbert v. Verner* (1963)**

The Court ruled that the denial of unemployment benefits to Adell Sherbert for turning down a job because it required her to work on the Sabbath “penalize[d] the free exercise of her constitutional liberties.”<sup>214</sup> The Court prevented the government from giving Sherbert an ultimatum: receive unemployment benefits or abandon her religious convictions. This case established the “*Sherbert* Test”: a test mandating the government must prove a compelling interest when compensation for unemployment is denied an individual who has been terminated from his place of employment because his position conflicted with his religious belief;<sup>215</sup> the test requires narrow tailoring and composes key components of what is typically called “strict scrutiny”—stringent judicial review as a standard used by the U.S. court system.<sup>216</sup> The *Sherbert* test contains four criteria to

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<sup>212</sup> *Torcaso v. Watkins*, 367 US 488 (1961).

<sup>213</sup> *Engel v. Vitale*, 370 US 421 (1962).

<sup>214</sup> *Sherbert v. Verner*, 374 US 398 (1963).

<sup>215</sup> See *Frazee v. Illinois Dept. of Employment Security*, 489 US 829 (1989); *Sherbert v. Verner*, 374 US 398 (1963).

<sup>216</sup> “Strict Scrutiny,” *Legal Information Institute*, Cornell University Law School, [https://www.law.cornell.edu/wex/strict\\_scrutiny](https://www.law.cornell.edu/wex/strict_scrutiny)

decide whether an individual's right to religious free exercise has been violated and consists of two phases.<sup>217</sup> First, the court must decide:

1. Does the individual have a claim that involves a sincere religious belief?
2. Is the individual's ability to act on his belief substantially burdened by the government action?

Additionally, the Court must prove that the government:

1. Has a "compelling state interest" to explain its actions.
2. Has pursued that interest in the least burdensome or least restrictive manner to religion.

### ***9. Abington School District v. Schempp (1963)***

With *Engel v. Vitale* as precedent, the Court struck down a Pennsylvania law mandating each school day begin with a Bible reading.<sup>218</sup> Public school-sponsored Bible reading in the United States is unconstitutional as a violation of the Establishment Clause. *Murray v. Curlett* (1963) was combined with *Abington*; In *Murray*, the Court ruled it unconstitutional for a Maryland law to require Baltimore City public schools to read the Bible and recite the Lord's Prayer at the beginning of each school day.<sup>219</sup>

### ***10. Epperson v. Arkansas (1968)***

The Court struck down an "anti-evolution" Arkansas law prohibiting the teaching of

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<sup>217</sup> *Sherbert v. Verner*, 374 US 398 (1963).

<sup>218</sup> *Abington School District v. Schempp*, 374 US 203 (1963).

<sup>219</sup> *Murray v. Curlett*, 83 S. Ct. 869 (1963).



evolution in public schools. The Court opinion remarked: “The First Amendment does not permit the state to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.”<sup>220</sup>

### ***11. Lemon v. Kurtzman (1971)***

The Court struck down a Pennsylvania law reimbursing religious schools for teacher salaries and textbooks, and ultimately established the “*Lemon* test,” which consisted of three requirements:<sup>221</sup>

1. A statute must have a secular purpose.
2. A statute must not foster excessive entanglement of government with religion.
3. A statute’s primary effect must not advance or inhibit religion.

### ***12. Wisconsin v. Yoder (1972)***

The Court reigned in the government by overturning the Wisconsin Compulsory School Attendance Law, which required attendance for all 14 to 16-year-olds; the Amish way of life is predicated upon their religious belief to live apart from worldly influence, therefore the state’s mandate infringed upon their First Amendment right.<sup>222</sup>

### ***13. McDaniel v. Paty (1978)***

The Court struck down a Tennessee law that forbade “ministers of the Gospel or priests

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<sup>220</sup> *Epperson v. Arkansas*, 393 US 97 (1968).

<sup>221</sup> *Lemon v Kurtzman*, 403 US 602 (1971).

<sup>222</sup> *Wisconsin v Yoder*, 406 US 205 (1972).

of any denomination whatever” from public office as unconstitutional: the state may not target anyone because of his/her religious profession.<sup>223</sup>

#### **14. *Stone v. Graham* (1980)**

The Court struck down a Kentucky statute requiring a copy of the Ten Commandments to be displayed in public school classrooms. Applying the *Lemon* test, the Court ruled the display unconstitutional because “...the posting of the Ten Commandments in public classrooms had no secular legislative purpose.”<sup>224</sup>

#### **15. *Mueller v. Allen* (1983)**

The Court upheld a Minnesota’s tax credits extension to parents for money spent on tuition, textbooks, transportation for private and religious schools. Because the tax credits satisfied the “three-part” *Lemon* test and did not advance religion but rather “has the secular purpose of ensuring that the State’s citizenry is well educated,” there was no violation of the Establishment Clause.<sup>225</sup>

#### **16. *Marsh v. Chambers* (1983)**

The Court upheld a Nebraska state legislature practice that employed a chaplain, paid by state funds, to open each session with prayer. The traditional practice did not violate the Establishment Clause because, “...the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke divine guidance on a public body entrusted with making the laws is not, in these circumstances, a violation of the

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<sup>223</sup> *McDaniel v. Paty*, 435 US 618 (1978).

<sup>224</sup> *Stone v. Graham*, 449 US 39 (1980).

<sup>225</sup> *Mueller v. Allen*, 463 US 388 (1983).

Establishment Clause; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.”<sup>226</sup>

### **17. *Lynch v. Donnelly* (1984)**

The Court upheld the city of Pawtucket, Rhode Island’s nativity display alongside a Christmas tree and a Santa Claus house in a public park. The Court summarized:

The concept of a “wall” of separation between church and state is a useful metaphor but is not an accurate description of the practical aspects of the relationship that in fact exists. The Constitution does not require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. Anything less would require the “callous indifference” (*Zorach v Clauson*)<sup>227</sup> that was never intended by the Establishment Clause.<sup>228</sup>

### **18. *Wallace v. Jaffree* (1985)**

The Court struck down an Alabama statute authorizing a one-minute period of silence in all public schools “for meditation or voluntary prayer.”<sup>229</sup> The Court applied the *Lemon* test to conclude the state law endorsed religion and was not motivated by any clear secular purpose.

### **19. *Thornton v. Caldor* (1985)**

The Court struck down a Connecticut statute that allowed Sabbath observers not to work

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<sup>226</sup> *Marsh v Chambers*, 463 US 783 (1983).

<sup>227</sup> *Zorach v Clauson*, 343 US 306 (1952).

<sup>228</sup> *Lynch v Donnelly*, 465 US 668 (1984).

<sup>229</sup> *Wallace v. Jaffree*, 472 U.S. 38 (1985).

on their chosen Sabbath day as a violation of the Establishment Clause. The Court concluded: “The Connecticut statute imposes on employers and employees an absolute duty to conform their business practices to the particular religious practices of an employee by enforcing observance of the Sabbath that the latter unilaterally designates,” which violated the *Lemon* test.<sup>230</sup>

#### **20. *Goldman v. Weinberger* (1986)**

The Court affirmed the Air Force in its regulation for uniform requirements that prevented an Orthodox Jew and ordained rabbi from wearing his yarmulke. The Court held that the First Amendment “did not prohibit application of air force regulation to prevent wearing of yarmulke by plaintiff while on duty and in uniform” because “the interest of the military's perceived need for uniformity” outweighed Simcha Goldman’s claim that his First Amendment freedom had been violated.<sup>231</sup>

#### **21. *Edwards v. Aguillard* (1987)**

The Court struck down Louisiana’s “Creationism Act,” which forbid teaching the theory of evolution in elementary and secondary schools unless it was accompanied with “creation science.”<sup>232</sup> Because the law lacked a secular purpose, the Court ruled it “facially invalid.”<sup>233</sup>

#### **22. *Allegheny County v. Greater Pittsburgh ACLU* (1989)**

The Court ruled that two holiday displays at the Allegheny County, Pittsburgh

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<sup>230</sup> *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985).

<sup>231</sup> *Goldman v. Weinberger*, 475 U.S. 503 (1986).

<sup>232</sup> *Edwards v. Aguillard*, 482 US 578 (1987).

<sup>233</sup> *Ibid.*

Courthouse were unconstitutional because they endorsed religion: The first, a nativity scene with an angel holding a banner exclaiming, “*Gloria in Excelsis Deo*,” which means: “Glory to God in the Highest;” The second, an 18-foot Chanukah menorah or candelabrum placed next to the city’s Christmas tree.<sup>234</sup> Although the menorah was owned by a Jewish group, the city erected, disassembled, and stored it each year.<sup>235</sup>

### ***23. Board of Education of Westside Community Schools v. Mergens (1990)***

The Court upheld the 1990 Equal Access Act, which required public schools to give the same access to religious groups that non-religious groups had to school facilities.<sup>236</sup>

### ***24. Employment Division v. Smith (1990)***

When two members of the Native American Church, an assembly that regularly included the ingestion of peyote—a spineless cactus with psychoactive alkaloids, particularly mescaline—as a part of its ceremonial and ritualistic practices, filed suit against the State of Oregon for the denial of unemployment benefits in 1990, the Court upheld the state of Oregon’s effort to uphold the “financial integrity” of the workers’ compensation fund.<sup>237</sup> The Court viewed Oregon’s law against ingesting peyote as “a generally applicable provision” that all individuals must obey regardless of religious belief, and did not believe the State was specifically targeting Alfred Smith and Galen Black for their personal religion.<sup>238</sup>

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<sup>234</sup> *Cty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989).

<sup>235</sup> *Ibid.*

<sup>236</sup> *Board of Education of Westside Community Schools v. Mergens*, 496 US 226 (1990).

<sup>237</sup> *Employment Division v. Smith*, 494 US 872 (1990).

<sup>238</sup> *Ibid.*

**25. *Lee v. Weisman* (1992)**

The Court ruled clergy members may not offer prayer as part of an official graduation ceremony as it is a violation of the Establishment Clause, which “guarantees at a minimum that a government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes’ a [state] religion or religious faith.”<sup>239</sup>

**26. *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993)**

The Supreme Court reversed a Florida District Court’s decision that targeted the Santeria religion for its practice of animal sacrifice; the District Court stated that “compelling governmental interests in preventing public health risks and cruelty to animals fully justified the absolute prohibition on ritual sacrifice accomplished by the ordinances, and that an exception to that prohibition for religious conduct would unduly interfere with fulfillment of the governmental interest because any more narrow restrictions would be unenforceable as a result of the Santeria religion’s secret nature.”<sup>240</sup> The Supreme Court concluded the government “may not enact laws that suppress religious belief or practice.”<sup>241</sup>

**27. *Zobrest v. Catalina Foothills School District* (1993)**

The Court upheld a deaf child and his parent’s claim that the state needed to provide a sign-language interpreter for their child attending a Roman Catholic high school. The Court ruled the aid was constitutional because it did go to the church, but went to the

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<sup>239</sup> *Lee v. Weisman*, 505 U.S. 577 (1992).

<sup>240</sup> *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

<sup>241</sup> *Ibid.*

student: “The Establishment Clause does not prevent respondent from furnishing a disabled child enrolled in a sectarian school with a sign-language interpreter in order to facilitate his education.”<sup>242</sup>

### ***28. Kiryas Joel School District v. Grumet (1994)***

The Court struck down a New York law that created a special school district to benefit Orthodox Jewish children because it was not religiously neutral to religion and sought to benefit a single religious group.<sup>243</sup>

### ***29. Capitol Square Review and Advisory Board v. Pinette (1995)***

The Court upheld a suit filed by a private group for the right to place a cross in the statehouse plaza of Columbus, Ohio during the Christmas season; the plaza was a traditional public forum open to any group on equal terms.<sup>244</sup> The Court summarized: “The display was private religious speech that is as fully protected under the Free Speech Clause as secular private expression.”<sup>245</sup>

### ***30. Santa Fe Independent School District v. Doe (2000)***

The Court ruled that student-initiated or led prayer before high school football games is a violation of the Establishment Clause because: “(1) student-led, student-initiated invocations prior to football games did not amount to private speech; (2) policy of permitting such invocations was impermissibly coercive; and (3) challenge to policy was not premature, as it was invalid on its face.”<sup>246</sup>

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<sup>242</sup> *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993).

<sup>243</sup> *Kiryas Joel School District v. Grumet*, 512 US 687 (1994).

<sup>244</sup> *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995).

<sup>245</sup> *Ibid.*

<sup>246</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

### **31. *Mitchell v. Helms* (2000)**

The Court upheld the Elementary and Secondary Education Act of 1965 (ESEA), under which “federal government distributes funds to state and local governmental agencies, which in turn lend educational materials and equipment to public and private schools.”<sup>247</sup> Because the aid was religiously neutral, it did not violate the Establishment Clause.

### **32. *Good News Club v. Milford Central School* (2001)**

The Court upheld a Christian religious club’s claim that their free speech right had been violated when a public school did not allow their meeting on site during after-school hours.<sup>248</sup> Allowing religious clubs to meet did not violate the Establishment Clause since other non-religious clubs were permitted to meet.

### **33. *Zelman v. Simmons-Harris* (2002)**

The Court upheld a government program that allowed tuition vouchers for students in Cleveland, OH to attend a private school of their parents’ choosing; the vouchers did not violate the Establishment Clause because they were neutral towards religion.<sup>249</sup>

### **34. *Elk Grove Unified School District v. Newdow* (2004)**

The Court ruled that a father who challenged the constitutionality of requiring teacher-led recitation of the Pledge of Allegiance, which includes the phrase “under God,” lacked prudential standing to file the suit as he was not the custodial parent.<sup>250</sup>

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<sup>247</sup> *Mitchell v. Helms*, 530 U.S. 793 (2000).

<sup>248</sup> *Good News Club v. Milford Central School*, 533 US 98 (2001).

<sup>249</sup> *Zelman v. Simmons-Harris*, 536 US 639 (2002).

<sup>250</sup> *Elk Grove Unified School District v. Newdow*, 541 US 1 (2004).



### **35. *Locke v. Davey* (2004)**

The Court upheld a Washington State scholarship fund for postsecondary expenses that stated a student may not use the funds for a devotional theological degree. The program is not unconstitutional because “it is...facially neutral with respect to religion.”<sup>251</sup>

### **36. *Van Orden v. Perry* (2005)**

The Court upheld the decision of the Texas State Capitol to erect a monument inscribed with the Ten Commandments. Chief Justice Rehnquist held that:

1.) The *Lemon v. Kurtzman* test was not useful in dealing with erection by Texas of passive monument on its Capitol grounds, and the court's analysis instead would be driven both by the nature of monument and by the nation's history;

2.) The display was typical of the unbroken history—dating back to 1789—of official acknowledgements by all three branches of government of religion's role in American life;

3.) While the Ten Commandments were undoubtedly religious, they also had undeniable historical meaning; and

4.) The Establishment Clause was not violated by the monument's display.<sup>252</sup>

### **37. *McCreary County v. ACLU* (2005)**

The Court struck down the display of the Ten Commandments in two Kentucky

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<sup>251</sup> *Locke v. Davey*, 540 U.S. 712 (2004).

<sup>252</sup> *Van Orden v. Perry*, 545 U.S. 677 (2005).

courthouses after applying the Lemon test: “The original display lacked any secular purpose because the Commandments are a distinctly religious document.”<sup>253</sup>

### **38. *Cutter v. Wilkinson* (2005)**

The Court upheld a federal law, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), that prohibited government from providing a “substantial burden on the religious exercise of a person residing in or confined to an institution.”<sup>254</sup> Ohio state inmates claimed prison officials failed to accommodate their “non-mainstream” religions. The Court concluded the law “alleviate[d] exceptional government-created burdens on private religious exercise” and therefore was compatible with the Establishment Clause.<sup>255</sup>

### **39. *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal* (2006)**

The Court ruled in favor of a small religious group who argued they were free to use a hallucinogenic drug called hoasca, a tea brewed from plants for religious communion, however the drug was illegal under the Controlled Substances Act; “The government failed to demonstrate...a compelling interest in barring the sacramental use of hoasca.”<sup>256</sup>

### **40. *Hein v. Freedom from Religion Foundation* (2007)**

The Court ruled taxpayers cannot bring suit against the executive office for its funding of several agencies dedicated to faith-based and religious charitable groups. Because “the expenditures at issue were not made pursuant to any Act of Congress, but under general

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<sup>253</sup> *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005).

<sup>254</sup> *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>255</sup> *Ibid.*

<sup>256</sup> *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 US 418 (2006).

appropriations to the Executive Branch,” there was no violation of the Establishment Clause.<sup>257</sup>

***41. Christian Legal Society v. Martinez (2010)***

The Court ruled in favor of a law school’s policy that official student groups must comply with the university’s nondiscrimination policy; The Christian Legal Society (CLS) group required its members to sign a “Statement of Faith,” which included a commitment to refraining from sex outside of marriage and unrepentant homosexual behavior.<sup>258</sup>

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<sup>257</sup> *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587 (2007).

<sup>258</sup> *Christian Legal Society v. Martinez*, 561 US 661 (2010).

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# *Curriculum Vita*

**Hannah R. Brankin**

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## **EDUCATION**

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### **JOHNS HOPKINS UNIVERSITY**

August 2016 – May 2018

3400 N. Charles Street, Baltimore, MD 21218

- Master of Arts in Government; Democracy Studies & Governance concentration
- Cumulative GPA: 3.8 / 4.0
- Honors Graduate

### **FLORIDA INTERNATIONAL UNIVERSITY**

August 2014 – May 2016

11200 SW 8th Street, Miami, FL 33199

- Bachelor of Arts in Political Science; International Relations minor
- National Security Studies Certificate
- Cumulative GPA: 3.9 / 4.0
- Honors College Member
- Dean's List: Fall Semester 2014, Spring Semester 2015, Summer Semester 2015, Fall Semester 2015, Spring Semester 2016

### **BROWARD COLLEGE**

August 2007 – August 2012

7200 Pines Blvd., Pembroke Pines, FL 33024

- Associate of Arts in English
- Cumulative GPA: 3.06 / 4.0

## **PROFESSIONAL EXPERIENCE**

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### **CALVARY CHAPEL FORT LAUDERDALE CHURCH**

June 2011 – April 2014

2401 W Cypress Creek Rd, Fort Lauderdale, FL 33309

#### **Ministry Assistant**

Hours per week: 45

- Served as the “*Point Person*” for all projects and crisis situations at the Hollywood church campus.
- Provided practical and biblical counsel, encouragement and prayer for phone calls, walk-ins, emails, and appointments.
- Provided clerical support for the Pastor of the Hollywood Campus; e.g., composing memos, filing, faxing, mailing, inventorying supplies, compiling data and reports, updating weekly database files, organizing weekly graphic, project, and connection handout requests, planning weekly, monthly, and annual calendar events, coordinating facility rental, managing pay schedules for employees, scheduling meetings, appointments and counseling sessions for the Pastor and self.

- Oversaw and maintained campus accounting, to include tracking collection report revenues, purchase orders, petty cash expenses and reconciliation, check registers, invoices, Benevolence financials, and church credit card purchases.
- Provided oversight support for the Sunday and Wednesday church services averaging 300 people, oversaw volunteer team averaging 135 people. Maintained volunteer organization, delivered supplies and provided all support needed to each area of ministry: Youth, Children's, Café, Women's, Men's, Couples, Worship, Benevolence, and Outreach.
- Organized and led Calvary Chapel Hollywood Women's Ministry events including quarterly Bible study breakfasts averaging 80-100 women and weekly Bible study groups averaging 40 people.
- Coordinated, interviewed, and trained church volunteers.
- Maintained church bookstore inventory/revenue.
- Oversaw/coordinated café purchase orders through The Grill Restaurant for all campus events/services.

#### **NOTEWORTHY ACCOMPLISHMENTS / AWARDS / RECOGNITION**

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- Young Lives Teen Mom Mentor August 2017 - Present
- McLean Bible Church Women's Mentor November 2017 - Present
- Phi Beta Kappa National Honor Society member April 2016
- Published author *Palette Magazine* April 2016
- 2012 Calvary Chapel Deaconess Award
- Volunteer: McLean Bible Church 2017 - Present
- Volunteer: The Cross Church - Children's Ministry, Women's Ministry, Outreach, and Service Greeting. 2014 - 2016
- Volunteer: Calvary Chapel Fort Lauderdale Church – Children's Ministry, Women's Ministry, Outreach, and Service Greeting. 2009 – 2014

#### **COMPETENCIES/INTERESTS**

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- **French Ability:** Intermediate competency
- **Computer Skills:** Geographic Information Systems (GIS) entry-level

#### **PERSONAL INTERESTS**

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- Camping; hiking; outdoor activities; traveling; basketball; scuba diving; paddle boarding; surfing